99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-484

CONSERVATION SERVICE REFORM ACT OF 1986

MARCH 6, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 969]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 969) to amend the Energy Security Act and the National Energy Conservation Policy Act to repeal the statutory authorities administered by the Residential Energy Conservation Service and the Commercial and Apartment Conservation Service, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in italic type in the reported bill.

The title of the bill is amended to reflect the amendment to the text of the bill.

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Purpose and Summary

This legislation (1) continues until 1990 the national program to conserve energy in the residential sector; (2) provides increased flexibility to states or utilities to develop and implement alternatives to the Federal residential conservation program; and (3) repeals the Commercial and Apartment Conservation Service (CACS) program. The legislation concentrates the Federal conservation effort primarily in the residential sector in recognition of the significant cost-effective savings still to be made in that sector, and the lack of affordable, reliable information for residential consumers on conservation investments.

H.R. 969, as amended, gives states the option of developing alternative energy conservation plans instead of being limited by the current requirements of Federal law under the Residential Conservation Service (RCS). While current law prescribes the method for achieving residential energy conservation under the RCS program, namely home energy audits, the alternative plan instead must be designed to meet performance goals set out in this legislation.

The bill would permit the Governor of a state, the state regulatory authority, or any other entity authorized to do so under state law to develop and implement an Alternative State Plan in lieu of the RCS audit program. The bill enumerates various suggested components of such an alternative plan, but requires only that the plan meet four express requirements, the chief one being that the plan be designed to result in annual residential energy conservation savings of at least 2 percent. The Alternative State Plan option gives states the flexibility to better their efforts under the RCS audit program, while allowing those states that prefer the original RCS program to continue to utilize it.

A state which elects to "opt out" of the RCS program and to generate an Alternative State Plan has authority to require utilities within that state to participate in that plan. A state which does not so elect may allow utilities within the state to "opt out" of the state RCS program and to generate Alternative Utility Plans.

The bill extends the last date for which utilities and participating home heating suppliers are requested to issue announcements to their customers of the RCS program from January 1, 1985 to January 1, 1990, with the exception that no utility be required to disseminate more than one such announcement between the date of enactment and January 1, 1990. Finally, Federal authority for the RCS program terminates on January 1, 1990.

Expansion of Definition of RCS-Eligible Customers

Under current law, the RCS program applies only to residential buildings with four units or less. The Committee bill expands the eligible customer base to include residential buildings with five or more units (multifamily buildings), with the proviso that a utility need not provide home energy audits to customers in multifamily buildings that are master-metered. This exception, which excludes

less than 20 percent of multifamily residents from RCS coverage, is in recognition of the fact that consumers who do not directly pay their own energy bills are less likely to invest in energy conservation initiatives.

Sunset of RCS Program

The RCS program is terminated as of January 1, 1990. The notification provisions of the RCS law, which require utilities to advise eligible customers of the availability of home energy audits at least every two years, are extended to January 1, 1990. No utility is required to send out more than one notice between the date of enactment and January 1, 1990, although this provision does not preclude a utility or any other entity from issuing more than one program announcement before January 1, 1990.

Repeal of CACS Program

The CACS program is repealed, with the exception that states with CACS plans approved before August 1, 1984 may continue with such plans under the auspices of Federal law. In repealing the CACS program, the Committee does not intend to preclude states or utilities from operating programs of this type under color of state law.

Alternative State Plans

A state may elect to "opt out" of its current RCS audit program and to instead formulate and implement an Alternative State Plan keyed to the state's particular energy needs and conservation potential. The content of the Plan is left to the discretion of the state, the only Federal mandates being that: (1) the Alternative State Plan be designed to result in residential energy savings of 2 percent or more annually; (2) the Plan contain the numerical and other goals, and an analysis of the data and rationale used to determine that the Plan is likely to achieve those goals; and (3) the Plan contain procedures concerning the supply and installation of residential conservation measures by utilities, i. cluding procedures for preventing unfair, deceptive or anticompetitive acts or practices by such utilities which relate to the implementation of the Plan. If a state elects to "opt out" of the RCS audit program, that state's public utilities are required to comply with the state's Alternative Plan.

Alternative Utility Plans

If a state does not elect to formulate an Alternative State Plan, and if that state has not prohibited its utilities from doing so, a utility may elect to "opt out" of the state's RCS audit program and to instead formulate an Alternative Utility Plan. The Federal requirements for such a Plan are substantially similar to those for Alternative State Plans, including the performance target of residential energy savings of 2 percent or more annually.

Enforcement Mechanism

At any time more than one year after an Alternative State Plan has been certified, any resident of the state may petition the Secretary of Energy to conduct a public hearing to determine if the Al-

ternative State Plan has been adequately implemented. The Secretary shall initiate Federal standby authority if he determines that the Plan has not been adequately implemented. If the Secretary fails to initiate Federal standby authority within 90 days of the filing of a petition, the resident/petitioner may bring a de novo action in the appropriate Federal District Court against the Secretary to compel the Secretary to initiate Federal standby authority.

Competition Provisions

Current law prohibits utilities from installing or supplying conservation measures except pursuant to three types of exemptions. These exemptions apply to specific waivers granted by DOE to a utility, to utility contracting programs for installation or supply, and to "grandfather" utility programs initiated before the passage of the original statute establishing the RCS program. This legislation revises the procedures and standards by which interested persons obtain review of alleged anticompetitive practices by public utilities in the implementation of the RCS program of Alternative State or Utility Plans. The legislation provides for review either before the state public regulatory commission or before the Federal Trade Commission.

Background and Need for the Legislation

The Federal Residential Conservation Service (RCS) program was mandated by the 1978 National Energy Conservation Policy Act (NECPA) (Public Law 95-619) and amended by the 1980 Energy Security Act (Public Law 96-294). The purpose of the program is to provide specific information to residents about energy conservation investments and procedures that would be appropriate to their homes. The information must be gathered and provided through an on-site inspection of the home, known as an "energy audit". Utilities were chosen as the mechanism to provide the information because of their frequent contact with residents, their expertise in energy issues, and because energy conservation often costs the utility less than new supplies of conventional electricity or gas. In its original enactment, Congress intended the RCS program to stimulate investment in conservation within the residential sector, which accounts for about 20 percent of total U.S. energy consumption.

The law requires large electric and gas utilities to offer to residential customers on-site audits consisting of home inspections and recommendations for energy-saving measures. Residential customers are defined as those in residences of one to four dwelling units. Also eligible are residents of individually heated or cooled apartments. Utilities covered by the mandate include any investor-owned or municipal utility that sells at least ten billion cubic feet of natural gas or 750 million kilowatt hours of electricity during a given calendar year. Under the law, utilities must offer to:

Provide information to each customer on the estimated costs and potential energy savings of individual conservation and renewable resources investments;

Provide information to customers on energy-saving practices;

Provide lists of contractors and lenders and help in selecting and arranging for contractors and financing;

Inspect completed conservation measures in certain instances; and

Provide conciliation services for consumer complaints.

The statute directs the Department of Energy to promulgate regulations for the RCA program. Each state is directed to work with its large electric and gas utilities in preparing, pursuant to regulations, a state plan for submission to the Department of Energy. The Department of Energy is required to prepare a Federal standby plan, under which it may require regulated utilities in states without approved and adequately implemented plans to offer a utility RCS program.

In 1980, Congress passed the Energy Security Act, which made several major changes to the RCS program. These include:

Creating the Commercial and Apartment Conservation Service, which extended the program to all multi-family buildings and to small commercial buildings;

Removing the prohibition on direct utility financing and expressly allowing utilities to subcontract for installation of conservation measures. (Utilities may not directly install or supply conservation measures, however, unless grandfathered by the law or unless they receive a waiver from DOE);

Placing a ceiling on audit charges to residential customers of $15 per audit; and

Reducing minimum warranty requirements from three years to one year.

Under the statute, covered utilities must send program announcements to their customers informing them of the RCS program every two years after approval of the plan until January 1, 1985. Although the obligation to inform customers of the program expired on that date, there is no similar termination date in the law for the RCS program itself.

Commercial and Apartment Conservation Service (CACS)

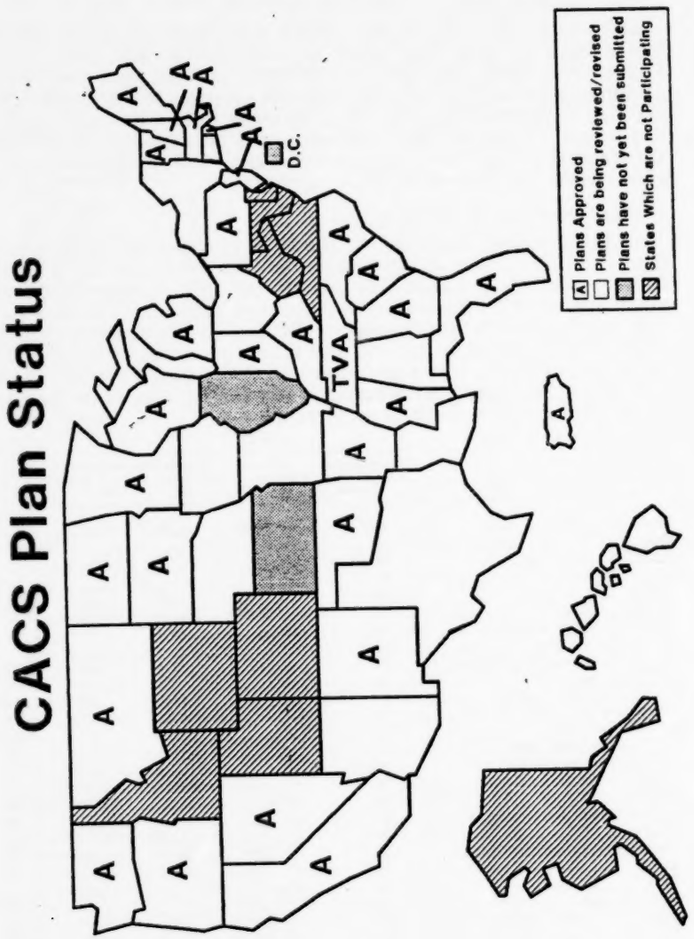
Under the CACS program, large gas and electric utilities must offer on-site energy audits to all multi-family buildings of five units or more that are centrally heated or cooled, and to small commercial buildings. Eligible commercial buildings are those for which the average monthly energy use for calendar year 1980 was less than 4,000 kilowatt hours of electricity or 1,000 therms of natural gas of the Btu equivalent of any other fuel.

The audit must provide information on energy-efficiency improvements and purchases appropriate to the dwelling. The amount charged by the utility for the audit may not exceed $15 per dwelling unit in the case of multi-family units. There is no restriction on the fee charged for commercial audits. The law requires the state regulatory authority to decide how the full cost of the program is to be recovered, taking into account the customer's ability to pay and the likely levels of participation in the program.

As with the RCS program, states must submit plans outlining the implementation of the CACS plan. The Department of Energy recently promulgated a Federal standby plan for those states without approved and implemented plans.

Each utility must offer the audit program within 12 months after DOE approval of the state plan, and every 24 months thereafter

until 1990. As of January 31, 1986, 36 states have submitted CACS plans to DOE, 28 of which have been approved. (See attached chart.) Only several states have actually implemented their CACS plans, including the State of Michigan, which has had a fully functioning CACS program in place for over a year.



Recent Funding History of the RCS Program

RCS and CACS were funded at $3.4 million in fiscal year 1982, $3.4 million in fiscal year 1983, $3.0 million in fiscal year 1984, $1,274,000 in fiscal year 1985 and $372,000 in fiscal year 1986. The Administration's fiscal year 1987 request proposes to zero fund RCS and CACS, "[c]onsistent with the shift away from a Federal regulatory role . . . Limited staff assistance will be provided to utilities and related groups to encourage voluntary energy efficiency programs using non-Federal funds."

Energy Conservation Potential

As the attached chart shows, the RCS program delivered more than 3 million home energy audits between 1982 and 1984. That figure represents a nationwide penetration rate of roughly 2% of the country's RCS/eligible households, well below the 7% penetration rate originally anticipated by DOE. Individual states report penetration rates of up to 20% and others report rates below 1%. As an example, the States of California, Connecticut, Florida, Massachusetts, Michigan and Wisconsin account for almost two-thirds of the total number of audits performed.

	1984 annual RCS report reviewed	Number of audits performed			
		Up to 1982	1983	1984	Total
Alabama	Yes	21,990	15,529	13,316	50,835
Alaska	No				
Arizona	No				
Salt River Project	No				
Arkansas	Yes	427	4,633	3,877	8,937
California	Yes	98,429	210,660	275,218	584,307
Anaheim Utilities Department	Yes		961	900	
Glendale Public Service	Yes				
Los Angeles Department of Water and Power	Yes		3,014	2,974	5,988
Modesto Irrigation District	Yes		195	426	621
Palo Alto Utilities Department	Yes		1,194	758	1,952
Riverside Public Utilities	Yes		300	145	445
Sacramento MUD	No			1,940	1,940
Santa Clara Electric Department	Yes		688	12	700
Turlock Irrigation District	Yes			477	477
Colorado	Yes	13,553	30,000	6,668	50,221
Connecticut	Yes	44,564	35,295	23,660	103,519
District of Columbia	No			2,552	2,552
Delaware	Yes	4,480	4,580	2,493	11,553
Florida	Yes	106,807	138,069	171,020	415,896
Georgia	Yes	7,636	15,605	8,772	32,013
Hawaii	No			1	1
Idaho (FSP State)	No	2,301			2,301
Illinois	No	63,255	44,097	49,859	157,211
Indiana	No	23,066	9,233	8,795	41,094
Iowa	No	29,808			29,808
Kansas (No RCS plan)	No				
Kansas City Board of Public Utilities	Yes		86	342	428
Kentucky	Yes	125	125	4,924	5,174
Louisiana	Yes	1,914	2,000	3,293	7,207
Lafayette Utilities System	No				
Maine	Yes	2,849	6,273	2,386	11,508
Maryland	Yes	9,334	33,146	10,274	52,754
Massachusetts	Yes	104,630	97,772	47,706	250,108
Michigan	Yes	185,000	149,000	171,400	505,400
Minnesota	Yes	10,842	35,675	25,801	72,318

	1984 annual RCS report reviewed	Number of audits performed			
		Up to 1982	1983	1984	Total
Mississippi	Yes	317	270	114	701
Missouri (No RCS implementation)	No				
Montana	No			5,400	5,400
Nebraska					
KNEnergy	Yes		218	238	456
Lincoln Electric System	No		236	161	397
Metro Utilities District, Omaha	Yes		1,295	1,290	2,585
Minnepasco	Yes		189	167	356
Nebraska Public Power	Yes		87	130	217
Northwestern Public Service	Yes			111	111
Omaha Public Power District	Yes	1,564	1,254	439	3,257
Peoples Natural Gas	Yes		330	133	463
Nevada	No				
New Hampshire	Yes		1,786	1,124	2,910
New Jersey	Yes	3,841	14,676	30,786	49,303
New Mexico	Yes	2,872	4,340	3,832	11,044
New York (No RCS plan)	No			92,583	92,583
North Carolina	Yes	3,086	3,599	2,386	9,071
North Dakota	Yes	0	0	726	726
Ohio	Yes	10,078	7,614	9,685	27,377
Oklahoma	Yes	9,383	13,486	14,679	37,548
NW Central Pipeline	Yes				
Oregon	No	32,597	29,300	19,622	81,519
Central Lincoln PUD	No				
Eugene Water and Electric Board	No		4,397	3,393	7,790
Pennsylvania	Yes	11,125	11,021	8,042	30,188
Puerto Rico					
Rhode Island	Yes	11,150	9,180	8,242	28,572
South Carolina	Yes	4,600	4,040	925	9,565
Santee Cooper	Yes		0	40	40
South Dakota	Yes	2,583	2,510	2,804	7,897
Tennessee	No				
Tennessee Valley Authority	Yes			29,815	29,815
Texas	Yes	3,957	48,256	37,337	89,550
Panhandle Eastern Pipeline	Yes			16	16
Utah (FSP State)	No				
Vermont	No	17,000		3,152	20,152
Virginia (FSP State)	No				
Richmond Department Public Utilities	Yes		754	188	942
Washington	No			19,391	
Benton County PUD	Yes	500		2,715	3,215
Chelan County PUD	No			1,680	1,680
Clark County PUD	Yes	2,138	7,066	5,664	14,868
Cowlitz County PUD	Yes	500	6,586	6,558	13,644
Grant County PUD	Yes			914	914
Grays Harbor County PUD	Yes	500	750	1,565	2,815
Seattle City Light	No				
Snohomish County PUD	Yes		33,766	8,174	41,940
Tacoma City Light	No	3,429		4,133	7,562
West Virginia	Yes	472	1,835	378	2,685
Wisconsin	Yes	9,000	72,000	69,473	150,473
Wyoming (FSP State)	No				
Total		861,702	1,118,971	1,238,194	3,218,867

Source: 1984 RCS Annual Reports, Summary and Highlights, prepared for the U.S. Department of Energy by Centaur Associates, Inc. (1985)

According to Eric Hirst of the Oak Ridge Laboratory and the nation's leading statistician of the RCS program, "evidence suggests that there remains considerable potential to reduce energy use in existing homes. . . . The issue is not the magnitude of the remaining potential (it is surely quite large) but rather the best ways to realize that potential." Dr. Hirst's studies indicate that RCS-audit-

ed homes cut energy consumption by 3 to 5 percent, above and beyond the savings they would have achieved without RCS participation, and that this figure is substantially higher in utility programs that include followup services such as zero-interest financing for energy conservation measures. Dr. Hirst's observations as to the untapped potential in the residential energy conservation market are confirmed in a December 1983 study by the Congressional Research Service (CRS) entitled "Residential Energy Conservation: How Far Have We Progressed and How Much Further Can We Go?" That study concluded that the nation could have used 28 to 38 percent less residential energy than it did in 1981 if cost-effective conservation improvements had been made in the nation's homes.

This legislation recognizes that the RCS program is not the only method of fostering residential energy conservation. Therefore, H.R. 969 as amended provides increased flexibility so that states may design their conservation programs so as best to realize the potential for residential energy conservation that still exists. The legislation terminates the Federal RCS program on January 1, 1990, at which time Federally mandated residential audits will have been available to consumers for approximately ten years.

In repealing the CACS program, the Committee has taken into consideration the fact that commercial buildings are often being effectively reached through private sector initiatives, and that Federal involvement may not be necessary or desirable. The repeal at this time should have a minimal disruptive effect on utilities and consumers because CACS programs have not yet started up in most states and should be beneficial to those not yet prepared to undertake such a program.

Competition Amendments

Numerous letters were received from energy conservation contractors by the Subcommittee, both before and after the legislative hearing, expressing their concern that public utilities are competing unfairly against them, and complaining that they lack an adequate forum in which to lodge claims of such unfair competition. See also "Competition Between Small Business and Public Utilities," Hearing Before the Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business of the Committee on Small Business, House of Representatives (May 22, 1984).

Section 216 of current law prohibits public utilities from supplying or installing residential energy conservation measures for residential customers, subject only to certain exceptions such as an express DOE waiver (Section 216(e) or specific activities that a utility was engaged in prior to the enactment of NECPA (Section 216(d)). Some contractors have complained both that Section 216 is substantively inadequate, and that DOE has failed to implement adequate procedures to enforce the Section 216 prohibitions.

The Committee responded to the concerns raised by the small contractors by revising the procedure whereby an interested person may raise claims of unfair competitive behavior by regulated utilities. The preferred forum for this procedure, as set forth in the bill, is the state regulatory authority. If the state regulatory authority does not provide the hearing, the interested person may lodge his

claim with the Federal Trade Commission. If the complaint meets specified requirements, the FTC shall initiate a complaint and proceed in accordance with Section 5(b) of the Federal Trade Commission Act. The activities to which Section 216 applies include, but are not limited to, residential energy conservation measures as defined in Section 210 of NECPA. In other words, those additional measures undertaken pursuant to an Alternative State or Utility Plan are also subject to the proscriptions of Section 216.

The Committee bill also amends Section 216 of current law ("Supply and Installation by Public Utilities") in two other ways. First, current law "grandfathers" certain utility residential energy conservation supply and installation activities which the utility was engaging in prior to the enactment of NECPA in 1978. The Committee bill restricts this "grandfather" exemption to those supply or installation activities which the utility was actually engaging in during the 12-month period ending June 1, 1985.

Second, the Committee bill adds to the Section 216 prohibitions the term "unauthorized cross subsidization." The Committee intends that the State regulatory authority or the Federal Trade Commission (as the case may be) consider the effects of utility cross subsidization on competitors, even if the impact of such cross subsidization on ratepayers is de minimis. Cross subsidization might include the use of utility resources such as trucks or billing envelopes where the use of such resources is not properly allocated to the activity or product in competition with competitors. The Committee intends that the Section 216 procedures be used to address cross subsidization of a utility's non-regulated activities by its regulated side; cross subsidization of a utility's regulated activities by its non-regulated side is not a matter of concern to the Committee. Section 216 would prohibit only "unauthorized' cross subsidization. An example of an "authorized" cross subsidization is the following: if a state regulatory authority or state law required a public utility to provide water heater insulation blankets to ratepayers free of charge (Such blankets retail at approximately $20.) and to pass the cost of the blankets on to its ratepayers, the subsidization would be "authorized." By contrast, if the utility, of its own accord and without legal or regulatory authorization, provided water heater insulation blankets to consumers at below market cost and passed on the cost differential to its ratepayers, this would constitute an "unauthorized" cross subsidization. A second example of an "authorized" cross subsidization is the RCS audit program itself. NECPA, as amended, requires large gas and electric companies to provide home energy audits to residential customers and to charge such customers no more than $15. The actual cost of such an audit is approximately $100; NECPA requires the utility to pass the $85 differential on to its ratepayers. In the absence of legal or regulatory authorization for such a cross subsidization, the pass-through of the $85 would be "unauthorized."

Hearings

The Committee's Subcommittee on Energy Conservation and Power held one full day of hearings on H.R. 969 and the related bills H.R. 929, H.R. 3189, and S. 410 on September 5, 1985. Testimo-

ny was received from 13 witnesses, representing 13 organizations, with additional material submitted by numerous individuals and organizations.

An initial panel consisting of J. Michael Farrell, General Counsel of DOE, and Harry R. Van Cleve, General Counsel of the General Accounting Office (GAO), debated the issue of the legal duration of the RCS program. Section 215(a) of current RCS law requires utilities offering an RCS program to notify their customers of the existence of the program. The notification requirement expired by law on January 1, 1985.

Although the statute explicitly terminated the notice requirement, it is silent on the issue of when the RSC program is to terminate. Based on the structure of NECPA, the legislative history of the Act, the overall statutory scheme relating to energy conservation, and the principle that related statutes are to be construed together, the Department of Energy has taken the position that the expiration of the notification requirement means that the entire RCS program has also expired, although the statute is silent on this score. Mr. Van Cleve disagreed, citing a recent GAO opinion (No. B-205356, June 3, 1985) which rejected DOE's position in full:

> First, Energy's position is premised on a fundamental error of statutory construction, . . . namely, that legislation is to be construed to be of limited duration unless there is evidence of a contrary legislative intent. In fact the reverse is true. Substantive legislation . . . is construed as permanent unless there is specific language indicating a limited duration.
>
> Second, Energy attempts, through its interpretation of the RCS program's legislative history and the contemporaneous enactment of other legislation, to create a statutory ambiguity that doesn't exist. Thirdly, Energy's current position is not consistent with its earlier pronouncements.

DOE has informed the Committee that its position as to the expiration of the RCS program remains unchanged despite the GAO opinion.

The first legislative panel consisted of Donna Fitzpatrick, DOE's Acting Assistant Secretary for Conservation and Renewable Energy Programs; Eric Hirst of the Oak Ridge National Laboratory; Carol Tombari, Director, Energy Efficiency Division of the Public Utility Commission of Texas; Matthew E. McLogan, Commissioner, Michigan Public Utility Commission; and Tony Perpich, Deputy Commissioner for Energy of the Minnesota Department of Energy and Economic Development.

Ms. Fitzpatrick presented DOE's position in support of the development of conservation to the fullest practicable extent consistent with economic efficiency, as a critical element in a balanced and diverse energy resource system. In light of this principle, Ms. Fitzpatrick stated DOE's opposition to both RCS and CACS, on the ground that the programs "were, or were expected to be, burdensome, overly restrictive, and often not cost-effective." Ms. Fitzpatrick's testimony was disputed by Eric Hirst of the Oak Ridge National Laboratory, who stressed that states and utilities which have taken an activist approach to RCS audits (such as Massachusetts,

Connecticut, Michigan and California) have shown impressive penetration rates (10% or more), statistically significant net energy savings, and a cost-effective overall program. Other states, by contrast, have shown less favorable results. On balance, according to Dr. Hirst, "[t]he economics of RCS . . . are very site specific . . . The present RCS program is not a failure. Neither is it much of a success." Dr. Hirst recommended increased flexibility to allow states with innovative alternatives to the Federal RCS program to implement them.

Dr. Hirst's observation as to national variances in the effectiveness of RCS was confirmed by the other witnesses on the panel. Matthew McLogan of the Michigan Public Service Commission testified that Michigan's utilities had completed over 600,000 RCS audits, representing 20% of the eligible population; that the program showed net energy savings (i.e. savings above those achieved in households that did not receive an RCS audit) of 4.3%; and that the program had already saved $66 million and was cost effective. Michigan's fledgling CACS program also showed impressive net energy savings of 12.5% and considerable interest in the program's continuation. Commissioner McLogan also stressed the need for continued Federal authority for the CACS program, because of both the considerable investment by the state in developing its program, and the Controltemp decision (No. 83CV1080DT, E.D. Mich., 1984, slip op.), which dismissed Federal antitrust claims by small contractors against the Michigan utilities offering RCS audits on the ground that the Federal requirement in NECPA that large regulated utilities provide RCS audits preempted the Sherman Act. Tony Perpich, speaking for the Minnesota Department of Energy and Economic Development, voiced equally strong support for continuing both the RCS and CACS programs, citing Minnesota's success with RCS to date.

The Administration's position as to repeal of RCS and CACS was corroborated by Carol Tombari of the Texas Public Utility Commission, who noted that only 3% of Texas' RCS-eligible customers had received RCS audits since the program's inception; that Texas' program was not cost effective; that energy savings had been insignificant; and that energy conservation alternatives adopted at the state level, such as a streamlined audit procedure, promised greater energy savings than RCS.

The second legislative panel, which included Norris McDonald, Director of the Environmental Policy Institute; Lawrence G. Spielvogel, representing the American Consulting Engineers Council; James B. Rickard, Duke Power Company, Jeanette Moser, Manager, Consumer Energy Services, Lone Star Gas Company; Gerald R. Brown, Executive Vice President, New England Power Company; and Stephen E. Ewing, President and Chief Operating Officer, Michigan Consolidated Gas Company, underscored again the great disparities in effectiveness of the RCS from state to state, and from utility to utility. Norris McDonald, representing the Energy Conservation Coalition, praised the effectiveness of the RCS program to date, and urged the Subcommittee to preserve both RCS and CACS. Lawrence Spielvogel, speaking on behalf of the American Consulting Engineers Council, criticized both the quality and cost effectiveness of RCS audits, and urged that the entire issue of

energy conservation be consigned to "the free enterprise system." The utility witnesses highlighted the vast contracts in success rates of RCS audits. For instance, James Rickard of Duke Power Company testified that the actual cost of his utility's RCS audits was $400 each, and that Duke Power had delivered RCS audits to a total of ½ of 1% of its eligible customers over a 4-year period. By contrast, Steve Ewing, President and Chief Executive Officer of Michigan Consolidated Gas Company, cited a cost of only $125 per RCS audit, and indicated that his utility has given audits to almost 20% of its RCS-eligible coustomers.

Committee Consideration

On December 13, 1985, the Subcommittee on Energy Conservation and Power met in open session and ordered reported the bill H.R. 969, as amended, by voice vote, a quorum being present. On February 4, 1986, the Committee met in open session and ordered reported the bill H.R. 969, with one amendment, by voice vote, a quorum being present.

Committee Oversight Findings

Pursuant to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives, no specific oversight findings or recommendations have been made by the Committee. However, as reflected in the legislative report, the Subcommittee is continuing to monitor actions by DOE taken in connection with its disputed position that the RCS program expired on January 1, 1985. (See "Hearings," supra.)

Committee on Government Operations

Pursuant to clause 2(l)(3)(D) of Rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

Committee Cost Estimate

In compliance with clause 7(a) of Rule XIII of the Rules of the House of Representatives, the Committee believes that the bill will result in cost savings at approximately $200,000 per year in Fiscal Years 1987 through 1990, with no impact on outlays in 1991 or subsequent years.

Congressional Budget Office Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, February 27, 1986.

Hon. John D. Dingell,
Chairman, Committee on Energy and Commerce. U.S. House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 969, the Conservation Service Reform Act of 1986, as ordered reported by the House Committee on Energy and Commerce, February 6, 1986. We estimate that enactment of this bill

would result in savings of approximately $200,000 per year in fiscal years 1987 through 1990, with no impact on outlays in 1991 or subsequent years. State governments may realize a small savings, because H.R. 969 would eliminate the need for state conservation plans required under Title VII of the National Energy Conservation Policy Act (NECPA).

H.R. 969 has two major provisions: (1) extension and reform of the Residential Conservation Service (RCS), relating to utility programs and home heating supplier programs, as required by NECPA; and (2) repeal of Title VII of NECPA, which relates to the Commercial Apartment Conservation Service (CACS). The first of these provisions would extend the authorization for RCS information and regulatory programs from January 1, 1985 (when authority for these programs lapsed) to January 1, 1990. The RCS programs require that utilities conduct home energy audits according to federally-approved state conservation plans, and that the states report on the results of these activities. H.R. 969 contains several revisions to RCS authority, including the elimination of some requirements placed on utilities and home energy suppliers, changes in the procedures for making amendments to state conservation plans and for granting exemptions to certain utilities, and addition of new authority that allows states to formulate and certify "alternative state plans" for residential energy conservation. H.R. 969 also requires the Secretary of Energy to report to the Congress no later than December 31, 1987 and December 31, 1989 on the actual energy savings resulting from RCS programs. Assuming appropriation of the necessary funds, CBO estimates that extension and reform of RCS programs will cost $500,000 to $600,000 per year in fiscal years 1987 through 1989, and approximately $200,000 in fiscal year 1990. (Under H.R. 969, the program authority is terminated on January 1, 1990.)

The second major provision of H.R. 969 is the repeal of Title VII of NECPA, which relates to the Commercial Apartment Conservation Service (CACS). Current law requires the Secretary of Energy to review CACS plans, disseminate information on energy audit and retrofit techniques, conduct technical reviews of state plan amendments, and implement a federal standby program for states that do not have CACS plans. CBO estimates that elimination of these responsibilities will save $700,000 to $800,000 per year in fiscal years 1987 through 1989, and approximately $400,000 in fiscal year 1990.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill: The legislation is expected to have a neglible inflationary impact. Even assuming a slight inflationary effect on utility rates, countervailing

deflationary effects would be expected from reduced energy expenditures by residents.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title: Conservation Service Reform Act of 1986

TITLE I—RESIDENTIAL CONSERVATION SERVICE

Section 101—Restatement of Findings

This section reaffirms the commitment of the Federal Government to energy conservation. Despite the progress made since the passage of NECPA in 1978, the United States remains dependent on non-renewable energy sources such as foreign oil. Continued investment in energy conservation by all sectors of the economy is an essential component of energy independence and economic growth.

Section 102—Changes in certain plan requirements

This section makes changes in certain plan requirements under the existing RCS program.

Extension of announcement date.—The bill would extend from January 1, 1985, to January 1, 1990, the last date on which utilities and participating home heating suppliers are required to issue announcements of the RCS program to their customers, with the exception that no utility or home heating supplier is required to issue more than one such announcement between the date of enactment and January 1, 1990.

Elimination of arranging and listing requirements.—The bill would eliminate the requirements that covered utilities and home heating suppliers arrange for the installation and financing of conservation measures and provide a list of suppliers, contractors and financial institutions to residential customers. (However, the bill would not prohibit such activities by a utility.)

If a Governor or public utility wishes to revise a previously approved residential energy conservation plan to reflect this legislation's elimination of requirements relating to arranging and listing, this section explicitly permits such a change without requiring that a plan amendment be submitted to the Secretary of Energy.

A state which elects to continue an RCS plan approved by DOE prior to enactment of this legislation must notify the Secretary of its election in writing within 120 days of enactment. No further notice or plan amendment is contemplated. In the case of a state with both an approved RCS plan and a CACS plan approved before August 1, 1984 (see Title II, Section 201(c)), the state may elect to proceed with both plans as approved without amending either plan.

Expansion of definition of RCS—eligible customers.—Current law provides RCS coverage for residential buildings with one to four units. The Committee bill would expand RCS coverage to include all residential buildings (i.e. buildings with one to four units and buildings with five or more units which do not contain individual meters for the dwelling units therein would not be eligible. The Committee intends that no state be required to amend or resubmit its RCS plan to DOE by virtue of this expansion of eligibility.

Extension of temporary exemptions.—Section 218 of current law authorizes the Secretary to approve "temporary [RCS] programs" for periods of up to 3 years. The Committee bill would authorize the Secretary to continue to authorize existing "temporary programs" that have already been approved pursuant to the Secretary's authority under section 218. The Committee bill does not authorize the Secretary to grant exemptions for new utility programs which have not previously received approval as "temporary programs."

Section 103—Alternative plans for residential buildings

The bill allows an exemption from the requirements of the RCS program for states or utilities which adopt an "alternative plan." This section would add new sections 226 and 227 to NECPA. Section 226 allows states to adopt an alternative plan, while section 227 allows utilities to develop alternative plans under certain circumstances.

Alternative state plans (new section 226).—A Governor of any state, any state regulatory authority, or any agency or instrumentality of a state (referred to in this report as the "State Entity") may, to the extent authorized under state law, formulate and certify to the Department of Energy an Alternative State Plan. Any state which certifies an Alternative State Plan shall continue to have such plan in effect until at least January 1, 1990. An Alternative State Plan may include nonregulated utilities within its coverage to the extent authorized under state law. An Alternative State Plan may be amended after its first year, but may be amended thereafter no more than once a year.

Formulation of the plan.—In formulating an Alternative State Plan, the State Entity must hold a public hearing with opportunity for oral and written comments prior to certification.

Content of the plan.—Any Alternative State Plan formulated pursuant to Section 226 shall:

(1) Be designed to result in annual residential energy conservation savings of 2 percent or more;

(2) Contain the goals established for the plan and an analysis of the data and rationale used by the State Entity to determine that the plan is likely to achieve such goals;

(3) Contain adequate procedures to assure that, if a public utility supplies or installs residential energy conservation measures, such actions are consistent with section 216 of NECPA, and that prices and rates of interest charged shall be fair and reasonable; and

(4) Contain adequate procedures for preventing unfair, deceptive, or anticompetitive acts or practices affecting commerce which relate to the implementation of the plan.

These are the only four Federal requirements for an Alternative State Plan. The Committee will also list eight additional suggested, but not required, elements of such a plan.

Certification.—The State Entity which elects to certify an Alternative State Plan shall, in addition, certify that that Plan meets the procedural and substantive requirements of the bill, that the Plan is likely to achieve its objectives, and that the Plan will be adequately implemented.

Annual Report.—The State Entity shall submit an annual report to DOE describing implementation of its Plan and reporting on the number of buildings reached and energy savings achieved within 60 days after the end of the one-year period to which the report applies. The report shall include an estimate of the actual energy savings resulting from the plan.

Administrative and judicial enforcement proceedings.—A resident of any state in which an Alternative State Plan has been certified may, no sooner than one year after the program's certification, petition DOE to conduct a public hearing on the ground that the Alternative State Plan has not been adequately implemented. At the time that such a petition is filed, the state may opt to implement its previously approved RCS plan and thus halt the DOE hearing process.

If the Secretary finds that the Plan has not been adequately implemented, he shall initiate Federal standby authority (implementing the regular RCS program) within 90 days after the petition is filed.

If the Secretary does not initiate Federal standby authority within 90 days, the petitioner may bring a de novo action in the appropriate U.S. District Court to require the Secretary to implement the Alternative State Plan. An individual who prevails in court in such an action shall be awarded reasonable attorney's fees and costs.

Alternative utility plans: regulated utilities (new section 227).—A utility in a state which: (a) has not implemented an Alternative State Plan; and (b) has not forbidden utilities in that state to formulate Alternative Utility Plans, may certify that it will carry out an Alternative Utility Plan. The provisions governing Alternative Utility Plans are similar to those governing Alternative State Plans in formulation of the plan, content of the plan, annual report, and administrative and judicial enforcement proceedings. In addition, where the utility develops an Alternative Plan, the state remains responsible for ensuring that the Plan contain adequate procedures to prevent anticompetitive practices by the utility in implementing the Plan.

Section 104—Reports and dissemination of information

No later than December 31, 1987, and December 31, 1989, DOE shall submit a report to the House Committee on Energy and Commerce and the Senate Committee on Energy and Natural Resources, comparing predicted energy savings with estimated actual energy savings achieved under both the RCS and alternative plans and identifying the most successful programs. DOE shall compile a summary of annual reports on alternative plans to be delivered annually to Congress.

Dissemination of information by DOE.—At least annually, the Secretary shall provide information to states and utilities, including technical assistance for calculating energy consumption reductions and information about the most effective programs.

Section 105—Termination

With the exception of certain prohibitions on supply, installation and financing by public utilities set forth in Section 216, as amend-

ed by this bill, all Federal authority under this part terminates on January 1, 1990. Actions or proceedings based upon acts committed before January 1, 1990 are not precluded by this section.

Section 106—Supply and installation by public utilities

NECPA prohibits utilities form directly installing or supplying conservation measures, as defined by NECPA for purposes of the RCS program. The existing law provides three types of exemptions from these prohibitions:

(1) A utility may, with the support of the Governor, petition DOE for a waiver from the prohibition. DOE may grant the waiver after making certain findings aimed at preventing anti-competitive activity.

(2) A utility may contract with an independent contractor to supply or install conservation measures. Under current law, no waiver is required for this exemption.

(3) A utility that supplied or installed conservation measures, or made substantial preparations to do so, may receive a "grandfather exemption" from DOE to continue such activity.

This section would amend existing law to provide an opportunity for a review of potential competitive abuses in each of the three types of exemptions named above.

General exemption (grandfather provision).—No change is made in the grandfather provision under Subsection d(3) of Section 216 of NECPA, which exempt utilities from installation and supply prohibitions in states where a state law or regulation requires or permits such supply or installation.

However, the grandfather provision is narrowed for those utilities that received a grandfather exemption pursuant to subsection d(1) or d(2) of section 216. These provisions provide a grandfather exemption to utilities that supplied, installed, advertised, or prepared for such programs prior to the enactment of the 1978 National Energy Conservation Policy Act. Starting July 1, 1987, the grandfather exemption will remain in effect only for those utilities which, during the 12-month period prior to June 1, 1985, were installing and supplying those specific measures for which they had already received and grandfather exemption.

State regulatory authority of Federal Trade Commission enforcement of prohibited activities.—An interested resident of a state may request a hearing to determine whether a public utility which has an exemption or waiver under Section 216 is engaging in any activity that involves:

Charging unfair or unreasonable prices or rates of interest with respect to the supply and installation of residential energy conservation measures;

Engaging in unfair methods of competition or unfair or deceptive acts or practices with respect to such supply and installation; or

Engaging in unauthorized cross subsidization with respect to such supply and installation.

The interested person must first raise his claim before the state regulatory authority, which is the Committee's preferred forum for examination of claims of unfair competitive behavior by public utilities. If the state regulatory authority (a) lacks legal authority to

review such claims under state law; or (b) has informed the resident making the request that it will not review the resident's claim; or (c) within 90 days of receipt of a request has failed to inform the resident that it will review the resident's claim; or (d) has agreed to review the resident's claim but has failed to initiate a proceeding within 6 months, then the resident may request review of the activity before the Federal Trade Commission (FTC). If the FTC determines that there is reason to believe that the public utility is carrying out one of the prohibited Section 216 activities, the FTC shall issue a complaint and notice of hearing, and shall conduct a proceeding in accordance with Section 5(b) of the Federal Trade Commission Act. If the FTC determines that a public utility is engaging in a prohibited Section 216 activity, it shall take appropriate action to enforce the prohibition.

The Committee bill does not affect the authority of the Federal Trade Commission to take any action with respect to the conduct proscribed by the bill upon the Commission's own initiative or upon the request of anyone else when such request is made other than under Section 216. The prohibitions in NECPA do not restrict the scope of the conduct that is unlawful under the Federal Trade Commission Act or any other law administered by the Commission.

TITLE II: COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS

The Commercial and Apartment Conservation Service (CACS) is repealed, with the exception that any state CACS plan approved under Section 721 of NECPA before August 1, 1984 may continue in effect under auspices of Federal law.

In addition, the Department of Energy is authorized to carry out certain demonstration projects which demonstrate innovative technologies applicable to commercial buildings. This provision responds to the increases in energy consumption in the building sector over the past decade.

The Committee believes that opportunities exist for worthwhile energy saving investments in commercial buildings. Progress in this area can be achieved by the establishment of model facilities to serve as national energy conservation demonstration centers where, on a changing basis, technologies that have utility applications are to be tested for their effectiveness. These facilities will serve as clearing houses for the dissemination of vital information about state of the art energy-conserving technologies for the designers, developers and owners of existing and future commercial buildings.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NATIONAL ENERGY CONSERVATION POLICY ACT

TITLE I—GENERAL PROVISIONS

SEC. 101. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—* * *

(b) TABLE OF CONTENTS.—* * *

* * * * * * *

TITLE II—RESIDENTIAL ENERGY CONSERVATION

PART 1—UTILITY PROGRAM

* * * * * * *

[Sec. 225. Federal Trade Commission study and report.]
Sec. 225. Reports and dissemination of information.
Sec. 226. Alternative State plans.
Sec. 227. Alternative Utility plans.
Sec. 228. Termination.

* * * * * * *

[TITLE VII—ENERGY CONSERVATION FOR COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS

[PART 1—GENERAL PROVISIONS

[Sec. 710. Definitions.
[Sec. 711. Coverage.
[Sec. 712. Rules of Secretary for submission and approval of plans.

[PART 2—ENERGY CONSERVATION PLANS

[Sec. 721. Procedures for submission and approval of State energy conservation plans for commercial buildings and multifamily dwellings.
[Sec. 722. Requirements for State plans for regulated utilities.
[Sec. 723. Plan requirements for nonregulated utilities and building hearing suppliers.

[PART 3—UTILITY PROGRAMS

[Sec. 731. Utility programs.
[Sec. 732. Building heating supplier program.

[PART 4—FEDERAL IMPLEMENTATION

[Sec. 741. Federal standby authority.]

SEC. 102. FINDINGS AND STATEMENT OF PURPOSES.

[(a) FINDINGS.—The Congress finds that—

[(1) the United States faces an energy shortage arising from increasing demand for energy, particularly for oil and natural gas, and insufficient domestic supplies of oil and natural gas to satisfy that demand;

[(2) unless effective measures are promptly taken by the Federal Government and other users of energy to reduce the rate of growth of demand for energy, the United States will become increasingly dependent on the world oil market, increasingly vulnerable to interrruptions of foreign oil supplies, and unable to provide the energy to meet future needs; and

[(3) All sectors of our Nation's economy must begin immmediately to significantly reduce the demand for nonrenewable energy resources such as oil and natural gas by implementing and maintaining effective conservation measures for the efficient use of these and other energy sources.]

(a) FINDINGS.—The Congress finds that—

(1) the United States has survived a period of energy shortage and has made significant progress toward improving energy efficiency in all sectors of the economy;

(2) effective measures must continue to be taken by the Federal Government and other users and suppliers of energy to control the rate of growth of demand for energy and the efficiency of its use;

(3) the continuation of this effort will permit the United States to become increasingly independent of the world oil market, less vulnerable to interruption of foreign oil supplies, and more able to provide energy to meet future needs; and

(4) all sectors of the economy of the United States should continue to reduce significantly the demand for nonrenewable energy resources such as oil and natural gas by implementing and maintaining effective conservation measures for the efficient use of these and other energy sources.

* * * * * * *

TITLE II—RESIDENTIAL ENERGY CONSERVATION

PART 1—UTILITY PROGRAM

SEC. 210. DEFINITIONS

As used in this title—

(1) * * *

* * * * * * *

[(9) The term "residential building" means any building used for residential occupancy which—

[(A) is not a new building to which final standards under sections 304(a) and 305 of the Energy Conservation and Production Act apply, and

[(B) contains at least one but not more than four dwelling units and has a system for heating or cooling, or both, except that, after January 1, 1982, such term shall also include any building which contains more than four dwelling units unless such building contains a heating or cooling system, or both, which is a central system.]

(9) The term "residential building" means any building used for residential occupancy which is not a new building to which final standards under section 304(a) of the Energy Conservation and Production Act apply and which has a system for heating or cooling, or both.

* * * * * * *

(16) The term "suggested measures" means, with respect to a particular residential building, the residential energy conservation measures which the Secretary, in the rules prescribed pursuant to section 212, determines to be appropriate for the location and the category of residential buildings which includes such building. In determining which of the residential energy conservation measures shall be suggested measures for a location and category of residential building, the Secretary shall

consider the cost of the inspection offered under section [215(b)(1)(A)] *215(b)* and its effect on the willingness of residential customers to participate in the utility program.

* * * * * * *

SEC. 212. RULES OF SECRETARY FOR SUBMISSION AND APPROVAL OF PLANS.

(a) PROMULGATION OF RULES BY SECRETARY.—* * *

(b) CONTENT OF SECRETARY'S RULES.—The rules promulgated under subsection (a)—

(1) * * *

(2) shall include—

(A) * * *

* * * * * * *

(C) standards for the procedures concerning fair and reasonable prices and rates of interest required under section [213(a)(4)] *213(a)(2); and*

[(D) standards, development in consultation with the Federal Trade Commission, concerning unfair, deceptive, or anticompetitive acts or practices, for the measures required under section 213(b);

[(E) standards which (i) require the lists referred to in section 213(a)(2) (concerning lists of suppliers and contractors) and 213(a)(3) (concerning lists of lending institutions) to be prepared in a fair, open, and nondiscriminatory manner and (ii) provide for the removal, in appropriate cases, of suppliers, contractors, or lending institutions from such lists; and

[(F) standards which assure that any person who alleges any injury resulting from a violation of the requirements of the standards under subparagraph (E) shall be entitled to redress under procedures established by the Governor (or the Secretary in any case in which section 219, relating to Federal standby authority applies);]

* * * * * * *

(c) PROCEDURE FOR SUBMISSION AND APPROVAL OF STATE RESIDENTIAL ENERGY CONSERVATION PLANS.—(1)(A) * * *

* * * * * * *

[(4) In the case of the Tennessee Valley Authority or any public utility with respect to which the Tennessee Valley Authority has ratemaking authority, the authority otherwise vested in the Governor or State agency under this section shall be vested in the Tennessee Valley Authority.]

(4) For purposes of this part, the term "Governor", the term "State regulatory authority", the term "State agency" and the term "agency or instrumentality of a State" mean the Tennessee Valley Authority in the case of the Tennessee Valley Authority or any public utility with respect to which the Tennessee Valley Authority has ratemaking authority.

SEC. 213. REQUIREMENTS FOR STATE RESIDENTIAL ENERGY CONSERVATION PLANS FOR REGULATED UTILITIES.

(a) GENERAL REQUIREMENTS.—No proposed residential energy conservation plan submitted for regulated utilities shall be approved by the Secretary unless such plan—

(1) * * *

[(2) provides a procedure for permitting any supplier or contractor—

[(A) who sells or installs residential energy conservation measures in the area served by such utility, and

[(B) who meets such minimum requirements as may be contained in rules promulgated by the Secretary under section 212(b)(2)(E) and who agrees to comply with the provisions promulgated under section 212(b)(3)

to be included on a list made public by such utility as provided under section 215(a)(3);

[(3) provides a procedure for permitting any bank, savings and loan association, credit union, or other public or private lending institution which—

[(A) offers loans for the purchase and installation of residential energy conservation measures in the areas served by such utility, and

[(B) which meets such minimum requirements as may be promulgated by the Secretary under section 212(b)(2)(E)

to be included on a list made public by such utility as provided under section 215(a)(3), and provides that such list shall include a notation informing customers that financial assistance under the Solar Energy and Energy Conservation Bank Act may be available from such lending institutions;]

[(4)]*(2)* provides adequate procedures to assure that each regulated utility will charge fair and reasonable prices and rates of interest to its residential customers under such utility program in connection with the purchase and installation of residential energy conservation measures;

[(5)]*(3)* provides procedures for resolving complaints against persons who sell or install residential energy conservation measures under such program;

[(6)]*(4)* provides procedures for insuring that effective coordination exists among various local, State, and Federal energy conservation programs within and affecting such State, including any energy extension service program administered by the Secretary of Energy;

[(7)]*(5)* is adopted after notice and public hearings;

[(8)]*(6)* meets such other requirements as may be contained in the rules promulgated under section 212, and

[(9)]*(7)* requires any utility undertaking a program involving the supply or installation of any residential energy conservation measure as permitted under section 216(c) or providing financing for the purchase or installation of any such measure to notify the Secretary of Energy when such program becomes effective.

(b) REQUIREMENTS CONCERNING UNFAIR, DECEPTIVE, OR ANTICOMPETITIVE ACTS OR PRACTICES.—

(1) * * *

(2) The measures under paragraph (1) shall include—

(A) provisions to assure that, in carrying out procedures under section [215(b)(1)] *215(b)* (or the corresponding procedures in section 217) the regulated utility will not unfairly discriminate among—

(i) residential customers,

(ii) suppliers and contractors of such measures, or

(iii) lending institutions in the utility's service area which offer loans for the purchase and installation of residential energy conservation measures, and

will not unfairly discriminate among measures which are purchased from, or installed by, any person under such program.

* * * * * * *

SEC. 214. PLAN REQUIREMENTS FOR NONREGULATED UTILITIES AND HOME HEATING SUPPLIERS.

(a) REQUIREMENTS FOR PLANS FOR NONREGULATED UTILITIES.—* * *

(b) REQUIREMENTS FOR PLANS FOR HOME HEATING SUPPLIERS.—No residential energy conservation plan proposed for home heating suppliers shall be approved by the Secretary unless such plan meets the same requirements as provided under section 213(a) (other than paragraphs (1) and [(8)] *(6)* thereof) and section 213 (b) and (c) and in addition—

(1) meets the requirements of section 217 and contains adequate enforcement procedures with respect to such requirements;

(2) meets such requirements applicable to home heating suppliers as may be contained in the rules promulgated under section 212; and

(3) takes into account the resources of small home heating suppliers.

* * * * * * *

SEC. 215. UTILITY PROGRAMS.

(a) INFORMATION REQUIREMENTS.—Each utility program shall include procedures designed to inform, no later than January 1, 1980, or the date six months after the approval of the applicable plan under section 212, if later, and each two years thereafter before January 1, [1985] *1990 (but not more often than once during the period beginning on the date of the enactment of the Conservation Service Reform Act of 1986 and ending on January 1, 1990),* each of its residential customers who owns or occupies a residental building, or—

(1) the suggested measures for the category of buildings which includes such residential building;

(2) the savings in energy costs that are likely to result from installation of the suggested measures in typical residential buildings in such category;

(3) the availability of the arrangements described in subsection (b) [and the lists referred to in section 213(a) (2) and (3)]; and

(4) suggestions of energy conservation techniques, including suggestions developed by the Secretary, such as adjustments in energy use patterns and modifications of household activities which can be employed by the residential customers to save energy and which do not require the installation of energy conservation measures (including the savings in energy costs that are likely to result from the adoption of such suggestions).

(b) PROJECT MANAGER REQUIREMENTS.—[Each utility program shall include—

(1) procedures] *Each utility program shall include procedures* whereby the public utility, no later than January 1, 1980, or the date six months after the approval of the applicable plan under section 212, if later, will, for each residential customer who owns or occupies a residential building, offer [to—

(A) inspect] *to inspect* the residential building (either directly or through one or more inspectors under contract) to determine and inform the residential customer of the estimated cost of purchasing and installing the suggested measures and the savings in energy costs that are likely to result from the installation of such measures (a report of which inspection shall be kept on file for not less than 5 years which shall be available to any subsequent owner without charge), except that a utility shall be required to make only one inspection of a residence unless a new owner requests a subsequent [inspection;

[(B) arrange to have the suggested measures installed (except for furnace efficiency modifications with respect to which the inspection prohibition of section 213(b)(2)(B) applies, unless the customer requests in writing arrangements for such modifications in writing); and

[(C) arrange for a lender to make a loan to such residential customer to finance the purchase and installation costs of suggested measures; and

[(2A) procedures whereby the public utility provides to each of its residential customers the lists as described in section 213(a) (2) and (3).] *inspection.*

* * * * * * *

(d) REQUIREMENTS. RESPECTING NEW CUSTOMERS.—In the case of any person who becomes a residential customer of a utility carrying out a utility program under this section after January 1, 1980 (or the date six months after approval of the applicable plan, if later), and before January 1, [1985,] *1990,* not later than 60 days after such person becomes a residential customer of such utility, such utility shall inform such person of the items listed in subsection (a)[, the offer required under subsection (b)(1)(A), and shall offer such person the opportunity to enter into arrangements referred to in subparagraphs (B) and (C) of subsection (b)(1)] *and the offer required under subsection (b).*

* * * * * * *

[(f) LOANS.—In the case of a loan which is arranged by a public utility under subsection (b)(1)(C), the utility, at the request of the

person making such loan, shall permit repayment of the loan as part of the periodic utility bill. The utility may recover from the person making such loan the cost incurred by the utility in carrying out such manner of repayment.]

[(g)] *(f)* EXEMPT ACTIVITIES.—For purposes of this section, the term "utility program" includes activities which are subject to this section by reason of section 216(f).

(g) EXEMPTION OF CERTAIN MULTIFAMILY BUILDINGS.—The provisions of this section shall not apply to any building which has five or more dwelling units and which does not contain individual meters for the dwelling units therein.

SEC. 216. SUPPLY AND INSTALLATION BY PUBLIC UTILITIES.

(a) PROHIBITION ON SUPPLY AND INSTALLATION BY PUBLIC UTILITIES.—* * *

* * * * * * * *

(c) EXEMPTION FROM PROHIBITION ON SUPPLY AND INSTALLATION.—(1) The prohibition in subsection (a) shall not apply to any residential energy conservation measure supplied or installed by a public utility through contracts between such utility and independent suppliers or contractors where the customer requests such supply or installation and each such supplier or contractor—

[(A) is on the list of suppliers and contractors referred to in section 213(a)(2);]

[(B)] *(A)* is not subject to the control of the public utility, except as to the performance of such contract, and is not an affiliate or a subsidiary of such utility; and

[(C)] *(B)* if selected by the utility, is selected in a manner consistent with paragraph (2).

(2) As provided under the provisions described in section 213(b)(2)(D), activities of a public utility under paragraph (1)—

(A) may not involve unfair methods of competition *or other activities described in subsection (g)(2);*

* * * * * * *

(C) shall be undertaken in a manner which provides, subject to reasonable conditions the utility may establish to insure the quality of supply and installation of residential energy conservation measures, that any financing by the utility of such measures shall be available to finance supply or installation by any contractor [on the lists referred to in section 213(a)(2)] or to finance the purchase of such measures to be installed by the customer;

* * * * * * *

(d) GENERAL EXEMPTIONS.—[The] *(1) Except as provided in paragraph (2), the* prohibitions contained in subsection (a) shall not apply to—

[(1)] *(A)* the supply, installation, or financing of those specific residential energy conservation measures which the Secretary determines were being installed or financed by a public utility on the date of enactment of this Act;

[(2)] *(B)* supply, installation, or financing activities which the Secretary determines were broadly advertised or for which

substantial preparations were completed on or before the date of enactment of this Act; or

[(3)]*(C)* supply, installation, or financing activities by a public utility with respect to energy conservation measures where a law or regulation in effect on or before the date of enactment of this Act either requires, or explicitly permits, the public utility to carry out such activities.

(2) Effective July 1, 1987, subparagraphs (A) and (B) or paragraph (1) shall not apply to the supply or installation of residential energy conservation measures other than measures which the Secretary determines were being installed or supplied by a public utility during the 12-month period ending June 1, 1985.

(e) WAIVER.—The Secretary may, upon petition of a public utility, supported in the case of a regulated utility by a Governor, waive in whole or in part the prohibitions contained in subsection (a) with respect to the utility if such utility demonstrates to the satisfaction of the Secretary that, in carrying out prohibited activities under subsection (a), fair and reasonable prices and rates of interest would be charged and the Secretary finds, after consultation with the Federal Trade Commission, that such activities would not be consistent with the prevention of unfair methods of competition [and], the prevention of unfair or deceptive acts or practices, *and the prevention of unauthorized cross subsidization.*

(f) APPLICATION OF SECTION 215.—Any public utility carrying out activities permitted under subsection (b) or (c) or subsection [(d)(2)] *(d)(1)(B)* or (e) of this section shall be subject to all the requirements of section 215 with respect to such activities. A public utility which is carrying out activities permitted pursuant to subsection [(d)(1)] *(d)(1)(A)* shall, within such reasonable period as may be prescribed by the Secretary, be subject to all such requirements of section 215 with respect to such activities. A public utility carrying out activities permitted pursuant to the exemption contained in subsection [(d)(3)] *(d)(1)(C)* shall not be subject to the requirements of section 215 with respect to such activities.

(g) [AUTHORITY TO MONITOR AND TERMINATE SUPPLY, INSTALLATION, OR FINANCING BY UTILITIES.—] *AUTHORITY TO MONITOR AND TERMINATE CERTAIN ACTIVITIES BY UTILITIES.*—(1) The Secretary, in consultation with the Federal Trade Commission, shall monitor financing, supply, and installation activities of public utilities in connection with residential energy conservation measures and shall report annually to Congress on such activities. Each such report shall contain the comments of the Federal Trade Commission.

[(2) After the date of the enactment of this subsection, no public utility may make any loan or finance the purchase or installation of, or supply or install any residential energy conservation measure if the Secretary has determined, after notice and opportunity for public hearing, and after consultation with the Federal Trade Commission, that—

[(A) such loans are being made, or supply or installations carried out, by such utility at unreasonable rates or on unreasonable terms and conditions, or

[(B) such loans made, or supply or installations carried out, by such utility have a substantial adverse effect upon competition or involve the use of unfair, deceptive, or anticompetitive acts or practices or are being carried out in a manner which does not comply with subsection (c).

[(h) ENFORCEMENT.—For purposes of section 219(d), any violation of a prohibition contained in this section shall be treated as a violation of a plan promulgated under section 219(a).]

(2) No public utility which has an exemption or waiver under this section may carry out any activity if the Federal Trade Commission, pursuant to subsection (h), or a State regulatory authority, pursuant to State law, has determined that such activity involves—

(A) charging unfair or unreasonable prices or rates of interest with respect to the supply and installation of residential energy conservation measures;

(B) engaging in unfair methods of competition or unfair or deceptive acts or practices with respect to such supply and installation; or

(C) engaging in unauthorized cross subsidization with respect to such supply and installation.

(h) ENFORCEMENT.—(1) For the purpose of determining whether a public utility which has an exemption or waiver under this section is engaging in any activity described in subsection (g)(2), an interested resident of a State may request—

(A) to the extent authorized under State law, a State regulatory authority; or

(B) in any case described in paragraph (2), the Federal Trade Commission,

to review an activity being carried out by such a public utility in whole or in part in such State.

(2) The Federal Trade Commission may review an activity of a public utility as a result of a request made under paragraph (1) only if—

(A) a State regulatory authority has—

(i) informed the resident making the request that it will not review such activity for the purpose described in paragraph (1); or

(ii) within the 90-day period beginning on the date on which the request to review such activity was made to the State regulatory authority by the resident, failed to inform the resident that it will review such activity for such purpose; or

(B) a State regulatory authority has informed the resident that it will review such activity for such purpose but has failed to initiate a proceeding for such purpose during the 6-month period beginning on the date on which the request to review such activity was made to the State regulatory authority by the resident.

(3) If a request for review is made to the Commission in any case described in subparagraph (A) or (B) of paragraph (2), the Commission shall review the matters specified in the request to determine whether there is reason to believe that the public utility concerned is carrying out an activity described in subsection (g)(2). If the Commission determines that there is reason to believe that the public

utility is carrying out such an activity, the Commission shall issue and serve upon such utility a complaint and a notice of hearing and conduct a proceeding in accordance with section 5(b) of the Federal Trade Commission Act to determine if such an activity is being carried out by the utility.

(4) If the Commission makes a determination pursuant to a proceeding described in paragraph (3) that a public utility is carrying out an activity described in subsection (g)(2) of this section, the Commission shall, utilizing the authority of the Commission to enforce prohibitions made by section 5 of the Federal Trade Commission Act, take appropriate action to enforce the prohibition in subsection (g)(2) of this section.

(5) Any violation of a prohibition contained in this section other than a violation of subsection (g)(2) shall be treated, for purposes of section 219(d), as a violation of a plan promulgated under section 219(a).

* * * * * * *

SEC. 217. HOME HEATING SUPPLIER PROGRAMS.

(a) REQUIREMENTS.—Each home heating supplier program shall include—

(1) procedures designed to inform, no later than January 1, 1980, or the date six months after the approval of the applicable plan under section 212, if later, and each two years thereafter before January 1, [1985] *1990 (but not more often than once during the period beginning on the date of the enactment of the Conservation Service Reform Act of 1986 and ending on January 1, 1990),* each residential customer of each participating home heating supplier who owns or occupies a residential building of—

(A) the suggested measures for the category of buildings which includes such residential building;

(B) the savings in energy costs that are likely to result from installation of the suggested measures in typical residential buildings in such category; and

(C) the availability of the arrangements described in paragraph (2) of this subsection; and

(2) procedures whereby a participating home heating supplier, no later than January 1, 1980 (or the later date referred to in paragraph (1)) will offer each such residential customer the opportunity to enter into arrangements with the home heating supplier under which such supplier, directly or through one or more inspectors under contract, [will—

(A) inspect] *will inspect* the residential building to determine and inform the residential customer of the estimated cost of purchasing and installing, and the savings in energy costs that are likely to result from [installing, suggested measures;

[(B) inform each interested customer of the lists referred to in section 213(a) (2) and (3);

[(C) install or have suggested measures installed;

[(D) make, or arrange for another lender to make, a loan to such residential customer to finance the purchase and installation costs of suggested measures; and

[(E) permit the residential customer to repay the principal of and interest on any loan made pursuant to subparagraph (D) (over a period of not less than three years unless the customer elects a shorter payment period) as a part of his periodic bill except:

[(i) failure to make any payment of such principal or interest shall not be grounds for the termination of fuel deliveries to the residential; and

[(ii) a lump-sum payment of outstanding principal and interest may be required upon default (as determined under otherwise applicable law) in payment by the residential customer,] *installing, suggested measures.*

* * * * * * *

SEC. 218. TEMPORARY PROGRAMS.

(a) EXEMPTION FROM CERTAIN REQUIREMENTS.—A Governor of any State, on behalf of one or more utilities, or any public utility (supported by the Governor in the case of a regulated utility) may, no later than 180 days after the promulgation of rules pursuant to section 212, apply for a temporary exemption for one or more utilities from one or more of the requirements of section 215 and the prohibitions contained in section 215(a). [Such temporary exemption may be granted, as determined by the Secretary, for a period not to exceed 3 years after the date of approval of such exemption.] *Such temporary exemption may be granted or renewed until such date as determined by the Secretary.*

* * * * * * *

(e) FEDERAL STANDBY AUTHORITY.—The Secretary shall not exercise the Federal standby authority, pursuant to section 219 (a) or (b) with respect to any public utility which is covered by a temporary exemption approved by the Secretary pursuant to this section. Upon termination of such temporary exemption, the Secretary shall exercise such authority unless, within such period as he deems reasonable after such termination, the State (or nonregulated utility as the case may be) has a plan applicable to such utility approved under section 212 and such plan is being adequately implemented (as determined by the Secretary)[.] *or a plan in effect under section 226 or section 227 which is applicable to such utility.*

SEC. 219. FEDERAL STANDBY AUTHORITY.

(a) STANDBY AUTHORITY FOR STATE REGULATED UTILITIES.—[If] *Except as provided in sections 226 and 227, if* a State does not have a plan approved under section 212(c) within 270 days after promulgation of rules under section 212(a), or within such additional period as the Secretary may allow pursuant to section 212(c)(1), or if the Secretary determines, after notice and opportunity for a public hearing that an approved plan is not being adequately implemented in such State, the Secretary shall—

(1) promulgate a plan which meets the requirements of section 213, and

(2) under such plan, by order, require each regulated utility in the State to offer, no later than 90 days following the date of issuance of such order, to its residential customers a utility

program prescribed in such order which meets the requirements specified in section 215 (except with respect to a utility for which such requirements are inapplicable by reason of section 216(f).

For purposes of applying section 213(c) in the case of a plan promulgated by the Secretary under this section, the references to the Governor or State agency shall be treated as references to the Secretary.

(b) NONREGULATED UTILITIES.—[If] *Except as provided in sections 226 and 227, if* a nonregulated utility which is not covered by an approved State plan under section 212 does not have a plan approved under section 212(c) within 270 days after promulgation of rules under section 212(a) or within such additional period as the Secretary may allow pursuant to section 212(c)(1), or if the Secretary determines that such nonregulated utility has not adequately implemented an approved plan, the Secretary shall, by order, require such nonregulated utility to—

(1) promulgate a plan which meets the requirements of section 214 and which applies to the residential buildings which would have been covered had such a plan been so approved or implemented, and

(2) under such plan, by order, require the nonregulated utility to offer, not later than 90 days following the date of issuance of such order, to its residential customers a utility program prescribed in such order which meets the requirements specified in section 215 (except in the case of a nonregulated utility for which such requirements are inapplicable by reason of section 216(f).

* * * * * * *

(e) PLANS APPROVED BEFORE 1986 AMENDMENTS.—For purposes of this section, any residential energy conservation plan which was approved by the Secretary before the effective date of the Conservation Service Reform Act of 1986 shall be treated as an approved plan which is adequately implemented if such plan is adequately implemented in accordance with the requirements of this Act as amended by the Conservation Service Reform Act of 1986.

* * * * * * *

[SEC. 225. FEDERAL TRADE COMMISSION STUDY AND REPORT.

[(a) STUDY.—(1) Before January 1, 1982, the Federal Trade Commission shall complete a study and submit a report to Congress and the President on the activities of public utilities and home heating suppliers under this part.

[(2) The study shall include a review of the making, or arranging, of loans and the installation, or arranging for installation, of any residential energy conservation measure by public utilities and home heating suppliers.

[(3) Such study may contain legislative recommendations respecting lending and installation activities for any residential energy conservation measure by public utilities and home heating suppliers and may contain recommendations concerning whether public utilities or home heating suppliers should be permitted by State or Federal law to continue to carry out such activities.

[(b) CONSIDERATIONS REQUIRED.—In conducting the study under this part, the Commission shall consider the effect of public utility and home heating supplier activities under this part on—

[(1) competition among utilities, home heating suppliers, contractors, and lenders in a utility's service area;

[(2) the availability of supplies of each residential energy conservation measure and the price of purchasing and installing each such measure;

[(3) the increase in the number of residential buildings in which are installed, or likely to be installed any such measure; and

[(4) any other factors the Commission deems appropriate.]

SEC. 225. REPORTS AND DISSEMINATION OF INFORMATION.

(a) GENERAL REPORT.—(1) No later than December 31, 1987, and December 31, 1989, the Secretary shall submit a report to the Chairman of the Committee on Energy and Commerce of the House of Representatives and the Chairman of the Committee on Energy and Natural Resources of the Senate relating to the operation of this part.

(2) Each such report shall include—

(A) a comparison of estimated actual and predicted energy savings resulting from plans under this part,

(B) identification of the most effective plans (or portions thereof),

(C) an analysis, based on completed audits and other relevant data, of the energy saving potential of the installation of additional residential conservation measures, and

(D) an analysis of economic, technical, behavioral, and other factors considered relevant to energy consumption by the Secretary.

Nothing in this paragraph shall require a survey of each residential building in which a residential energy conservation measure has been installed under this part.

(b) SUMMARY OF ALTERNATIVE PLAN REPORTS.—No later than December 31, 1987, and December 31, 1989, the Secretary shall submit a report to the Chairman of the Committee on Energy and Commerce of the House of Representatives and the Chairman of the Committee on Energy and Natural Resources of the Senate summarizing the annual reports the Secretary received under section 226(f) and section 227(f).

(c) DISSEMINATION OF INFORMATION.—(1)(A) The Secretary shall at least annually, in fiscal years beginning after September 30, 1985, disseminate to the States and public utilities information providing technical assistance and relating to the most cost-effective energy conservation procedures and devices (including resdiential energy conservation measures) and the most successful plans (or portions thereof) under this part.

(B) The Secretary shall make the information described in subparagraph (A) available to the public.

(2) The Secretary shall conduct seminars in various regions of the United States to disseminate information described in paragraph (1).

SEC. 226. ALTERNATIVE STATE PLANS.

(A) IN GENERAL.—A Governor of any State, any State regulatory authority, or any agency or instrumentality of a State may elect, to the extent authorized under State law, to formulate and certify an alternative State plan for residential buildings under this section.

(b) CONSEQUENCES OF CERTIFICATION.—(1) Beginning with the date on which the certification of a plan is made with respect to a State under subsection (e) and ending with the date on which a plan is no longer in effect under this section with respect to such State—

(A) subsections (a) through (c)(3) of section 212, sections 213 through 215 and sections 217 and 218 shall not apply with respect to—

(i) regulated utilities in such State, and

(ii) nonregulated utilities which are included in the plan;

(B) section 219 shall apply to utilities described in subparagraph (A) only to the extent provided for in subsection (g); and

(C) sections 212 through 219 shall apply to nonregulated utilities which are not included in the plan and which have not certified an alternative utility plan under section 227.

(2) Except as provided in subsection (g), any State for which a plan is certified under subsection (e) shall continue to have such plan in effect until January 1, 1990.

(c) FORMULATION OF PLAN.—In formulating any plan under this section, the entity in charge of formulating such plan shall—

(1) examine energy conservation and load management programs and perform a cost benefit analysis of program measures to be included in the plan, including an assessment of the lifecycle benefits of energy conservation measures to be included in the plan;

(2) provide for advance notice to the public of proposed rulemaking for the purpose of formulating such plan;

(3) publish a proposed rule on the content and implementation of the plan, including goals for energy conservation;

(4) afford interested persons an opportunity to present oral and written comments on matters relating to such proposed rule; and

(5) after making the examination and analysis described in paragraph (1) and after taking into consideration comments made by the public, prescribe and make public a final rule setting forth the content and implementation of such plan.

(d) CONTENT OF PLAN.—(1) A plan certified pursuant to this section shall—

(A) be designed to result in annual residential energy conservation savings of 2 percent or more;

(B) contain the goals established for the plan and an analysis of the data and rationale used by the entity in charge of formulating the plan to determine that the plan is likely to achieve such goals;

(C) contain adequate procedures to assure that, if a public utility supplies or installs residential energy conservation measures, such actions shall be consistent with section 216 and prices and rates of interest charged shall be fair and reasonable; and

(D) contain adequate procedures for preventing unfair, deceptive, or anticompetitive acts or practices affecting commerce which relate to the implementation of such plan.

(2) A plan certified pursuant to this section may—

(A) be designed to result in the dissemination of general energy conservation suggestions to residential customers of utilities in the State;

(B) be designed to result in—

(i) specific energy conservation suggestions to residential customers requesting such suggestions regarding the customer's residential building,

(ii) energy conservation improvements (which are included in such plan) to the customer's residential building, or

(iii) load management improvements (which are included in such plan) in the customer's residential building;

(C) be designed to benefit individuals, including but not limited to individuals with low or moderate incomes;

(D) be carried out by the State, by utilities within the State, or a combination of both;

(E) be consistent with the standards referred to in section 212(b)(2)(D);

(F) contain rules consistent with the requirements of section 215(c);

(G) contain provisions to assure that any person who alleges any injury resulting from a violation of any plan provision shall be entitled to redress pursuant to State law; and

(H) contain provisions described in section 213(b)(2)(B).

(e) CERTIFICATION.—(1) The entity which elects to certify a plan under this section shall certify, pursuant to a form to be prescribed by the Secretary (except as provided by paragraph (2)), to the Secretary that—

(A) the plan and the formulation of the plan meet the requirements of subsections (c) and (d)(1);

(B) the plan is likely to achieve the goals established for the plan if it is adequately implemented; and

(C) the plan will be adequately implemented.

(2) If a form is not made available by the Secretary within 90 days after the date of the enactment of this section, the entity in charge of certifying the plan may make such certification on a form prescribed by such entity.

(3) Any certification under this subsection shall include a detailed explanation of the manner in which the contents of the plan will be implemented.

(f) ANNUAL REPORT.—(1) The entity which certifies a plan under subsection (e) shall submit an annual report to the Secretary, within 60 days after the end of the 1-year period to which the report relates, describing the implementation of the plan and the results thereof.

(2) Such report shall include—

(A) a statement of the number of residential buildings receiving benefits under the plan,

(B) an estimate of the actual energy savings resulting from the plan and a description of the sources of such savings,

(C) a statement of the percentage of individuals with low and moderate incomes who receive benefits under the plan,

(D) a detailed description of the benefits provided under the plan and of how the plan is implemented, and

(E) the names of the entities carrying out the plan.

(g) ADMINISTRATIVE AND JUDICIAL ENFORCEMENT PROCEEDINGS.—(1) At any time more than 1 year after an alternative State plan has been certified under subsection (e) with respect to a State, any resident of such State may petition the Secretary of Energy to conduct a public hearing to determine if the alternative State plan has been adequately implemented. A copy of such petition shall be transmitted to the entity in charge of the plan on the same date it is transmitted to the Secretary. The Secretary shall have 90 days after the date on which such petition is received to make a determination on the matter.

(2) Except as provided in paragraph (3), if the Secretary determines that the alternative State plan has not been adequately implemented, the Secretary shall, within the 90-day period described in paragraph (1), initiate standby authority under section 219 with respect to such State. If the Secretary does not initiate the standby authority within the 90-day period, the resident may bring a de novo action in the appropriate United States district court against the Secretary (with the State having the right to intervene) to require the Secretary to implement standby authority under section 219. If an individual prevails in such an action, the court shall award such individual reasonable fees and expenses of attorneys and costs.

(3) If a State which had an approved plan in effect under section 212 on the day before the date on which certification was made under this section informs the Secretary in writing, within 30 days after receiving a copy of the petition described in paragraph (1), that it will no longer implement a plan certified under this section and that it will implement the approved plan which was in effect in the State on the day before certification of the alternative plan under this section, then—

(A) the determinations and actions described in paragraph (2) may not be carried out; and

(B) sections 212 through 219 shall apply in such State except to the extent an alternative utility plan under section 227 is implemented in such State.

(h) COVERAGE.—A plan certified under this section shall not apply to utilities other than utilities covered under section 211(a).

(i) INCLUSION OF NONREGULATED UTILITIES.—A nonregulated utility may not be included in a plan under this section unless such inclusion is authorized under State law or the nonregulated utility agrees to such inclusion.

(j) INCENTIVES.—The entity in charge of a plan under this section, or a State regulatory authority, may, to the extent permitted under State law, provide incentives for utilities to meet the goals contained in the State's alternative plan, including providing such utilities that meet or exceed such goals with a rate of return on expenditures made for the purpose of accomplishing such goals.

(k) UTILITIES WITH RETAIL SERVICE TERRITORIES IN MORE THAN 1 STATE.—For purposes of this section, any utility with a retail serv-

ice territory in more than one State shall be considered to be a separate utility with respect to each State in which its retail service territory is located.

(l) CLASSIFICATION AS LOAD MANAGEMENT IMPROVEMENT OR ENERGY CONSERVATION IMPROVEMENT.—In the case of a technique or installation which may be classified as either a load management improvement or an energy conservation improvement, the entity in charge of carrying out the plan under this section shall determine whether to treat such technique or installation as a load management improvement, an energy conservation improvement, or both, for purposes of this section.

(m) AMENDMENT OF A PLAN.—(1) Except as provided by paragraph (2), a plan certified under this section may be amended by any amendment—

(A) formulated in a manner consistent with the requirements applicable to the formulation of a plan under subsection (c); and

(B) certified to the Secretary of Energy in a manner consistent with the requirements applicable to the certification of a plan under subsection (e).

(2) A plan certified under this section may not be amended—

(A) during the first year after it is certified; or

(B) more than once a year thereafter.

SEC. 227. ALTERNATIVE UTILITY PLANS.

(a) IN GENERAL.—(1) Subject to paragraph (2) and after the 6-month period beginning with the date of the enactment of this section, a utility which is in a State in which an alternative State plan is not in effect under section 226 may elect to formulate and certify an alternative utility plan for residential buildings under this section.

(2) During the 6-month period beginning with the date of the enactment of this section, the Governor, a State regulatory authority, or another agency or instrumentality of the State concerned (whichever is authorized under State law to submit a plan to the Secretary pursuant to section 212(c)(1)(A) of this Act) may, under State law, prohibit utilities in such State from taking any action under this section.

(b) CONSEQUENCES OF CERTIFICATION.—(1) Beginning with the date on which the certification of a plan is made with respect to a utility under subsection (e) and ending with the date on which a plan is no longer in effect under this section with respect to such utility—

(A) subsections (a) through (c)(3) of section 212, sections 213 through 215 and sections 217, 218, and 226 shall not apply with respect to such utility; and

(B) section 219 shall apply to such utility only to the extent provided for in subsection (g).

(2) Except as provided in subsection (g), any utility which certifies a plan under subsection (e) shall continue to have such plan in effect until January 1, 1990.

(c) FORMULATION OF PLAN.—In formulating any plan under this section, the utility shall—

(1) examine energy conservation and load management programs and perform a cost benefit analysis of program measures to be included in the plan, including an assessment of the lifecycle benefits of energy conservation measures to be included in the plan;

(2) provide for advance notice to the public of such plan;

(3) publish a description of the proposed content and implementation of the plan, including goals for energy conservation;

(4) afford interested persons an opportunity to present oral and written comments on matters relating to such proposed plan; and

(5) after making the examination and analysis described in paragraph (1) and after taking into consideration comments made by the public, prescribe and make public a final plan setting forth the content and implementation of such plan.

(d) CONTENT OF PLAN.—(1) A plan certified pursuant to this section shall—

(A) be designed to result in annual residential energy conservation savings of 2 percent or more;

(B) contain the goals established for the plan and an analysis of the data and rationale used by the entity in charge of the plan to determine that the plan is likely to achieve such goals;

(C) contain certification, by the entity authorized under State law to submit a plan to the Secretary pursuant to section 212(c)(1)(A) of this Act, that the plan has adequate procedures to assure that, if a public utility supplies or installs residential energy conservation measures, such actions shall be consistent with section 216 and prices and rates of interest charged shall be fair and reasonable; and

(D) contain certification, by the entity authorized under State law to submit a plan to the Secretary pursuant to section 212(c)(1)(A) of this Act, that the plan has adequate procedures for preventing unfair, deceptive, or anticompetitive acts or practices affecting commerce which relate to the implementation of such plan.

(2) A plan certified pursuant to this section may—

(A) be designed to result in the dissemination of general energy conservation suggestions to residential customers of utilities in the State;

(B) be designed to result in—

(i) specific energy conservation suggestions to residential customers requesting such suggestions regarding the customer's residential building,

(ii) energy conservation imporvements (which are included in such plan) to the customer's residential building, or

(iii) load management improvements (which are included in such plan) in the customer's residential building;

(C) be designed to benefit individuals, including but not limited to individuals with low or moderate incomes;

(D) be consistent with the standards referred to in section 212(b)(2)(D);

(E) contain rules consistent with the requirements of section 215(c); and

(F) contain provisions described in section 213(b)(2)(B).

(e) CERTIFICATION.—(1) A utility which elects to certify a plan under this section shall certify, pursuant to a form to be prescribed by the Secretary (except as provided by paragraph (2)), to the Secretary that—

(A) the plan and the formulation of the plan meet the requirements of subsection (c) and (d)(1);

(B) the plan is likely to achieve the goals established for the plan if it is adequately implemented; and

(C) the plan will be adequately implemented.

(2) If a form is not made available to a utility by the Secretary within 90 days after the date of the enactment of this section, the utility may make such certification on a form prescribed by such utility.

(3) Any certification under this subsection shall include a detailed explanation of the manner in which the contents of the plan will be implemented.

(f) ANNUAL REPORT.—(1) The utility shall submit an annual report to the Secretary, within 60 days after the end of the 1-year period to which the report relates, describing the implementation of the plan and the results thereof.

(2) Such report shall include—

(A) a statement of the number of buildings receiving benefits under the plan,

(B) an estimate of the energy savings resulting from the plan and a description of the sources of such savings,

(C) a statement of the percentage of individuals with low and moderate incomes who receive benefits under the plan, and

(D) a detailed description of the benefits provided under the plan and of how the plan is implemented.

(g) ADMINISTRATIVE AND JUDICIAL ENFORCEMENT PROCEEDINGS.—(1) At any time more than 1 year after an alternative utility plan has been certified under subsection (e) under this section, any residential customer of such utility may petition the Secretary of Energy to conduct a public hearing to determine if the alternative utility plan has been adequately implemented. A copy of such petition shall be transmitted to the utility concerned on the same date it is transmitted to the Secretary. The Secretary shall have 90 days after the date on which such petition is received to make a determination on the matter.

(2) Except as provided in paragraph (3), if the Secretary determines that the alternative utility plan has not been adequately implemented, the Secretary shall, within the 90-day period described in paragraph (1), initiate standby authority under section 219 with respect to such utility. If the Secretary does not initiate the standby authority within the 90-day period, the resident may bring a de novo action in the appropriate United States district court against the Secretary (with the utility having the right to intervene) to require the Secretary to implement standby authority under section 219. If an individual prevails in such an action, the court shall award such individual reasonable fees and expenses of attorneys and costs.

(3) If a utility which was carrying out an approved plan under this part in effect on the day before the date on which certification was made under this section informs the Secretary in writing,

within 30 days after receiving a copy of the petition described in paragraph (1), that it will no longer implement a plan certified under this section and that it will implement the approved plan which it was carrying out on the day before certification of the alternative plan under this section, then—

(A) the determinations and actions described in paragraph (2) may not be carried out; and

(B) sections 212 through 219 shall apply to such utility.

(4) For purposes of implementing section 219(a)(2) to a regulated utility as a result of this subsection, the term "each regulated utility in the State" in such section shall be deemed to mean only the utility with respect to which action is taken under this subsection.

(h) COVERAGE.—A plan certified under this section shall not apply to utilities other than utilities covered under section 211(a).

(i) UTILITIES WITH RETAIL SERVICE TERRITORIES IN MORE THAN 1 STATE.—For purposes of this section, any utility with a retail service territory in more than one State shall be considered to be a separate utility with respect to each State in which its retail service territory is located.

(j) INCENTIVES.—A State or a State regulatory authority may, to the extent permitted under State law, provide incentives for a utility to meet the goals contained in its alternative plan, including providing such a utility that meets or exceeds its goals with a rate of return on expenditures made for the purpose of accomplishing such goals.

(k) CLASSIFICATION AS LOAD MANAGEMENT IMPROVEMENT OR ENERGY CONSERVATION IMPROVEMENT.—In the case of a technique or installation which may be classified as either a load management improvement or an energy conservation improvement, the utility shall determine whether to treat such technique or installation as a load management improvement, an energy conservation improvement, or both, for purposes of this section.

(l) AMENDMENT OF A PLAN.—Except as provided by paragraph (2), a plan certified under this section may be amended by any amendment—

(A) formulated in a manner consistent with the requirements applicable to the formulation of a plan under subsection (c); and

(B) certified to the Secretary of Energy in a manner consistent with the requirements applicable to the certification of a plan under subsection (e).

(2) A plan certified under this section may not be amended—

(A) during the first year after it is certified; or

(B) more than once a year thereafter.

SEC. 228. TERMINATION.

Effective January 1, 1990, all authority under this part shall terminate, except that—

(1) the provisions of section 216 shall not terminate and the provisions of sections 215 and 219(d) shall be considered to be in effect to the extent necessary to enforce section 216; and

(2) such expiration shall not affect any action or proceeding based upon an act committed prior to midnight January 1, 1990, and not finally determined by such date.

[TITLE VII—ENERGY CONSERVATION FOR COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS

[PART 1—GENERAL PROVISIONS

[SEC. 710. DEFINITIONS.

[(a) APPLICABILITY OF TITLE II DEFINITIONS.—The definitions in section 210 are applicable to this title, except as otherwise provided in this section.

[(b) ADDITIONAL DEFINITIONS.—As used in this title—

[(1) The term "building heating supplier" means any person engaged in the business of selling No. 2, No. 4, or No. 6 heating oil, kerosene, or propane to eligible customers.

[(2) The term "commercial building" means a building—

[(A) which was completed on or before the date of enactment of this title.

[(B) which is used primarily for carrying out a business (including a nonprofit business) or for carrying out the activities or administration of a State or local government,

[(C) which is not used primarily for the manufacture or production of proudcts, raw materials, or agricultural commodities, and

[(D) for which the average monthly use of energy for the calendar year 1980 is less than 4,000 kilowatt hours of electricity or 1,000 therms of natural gas or the Btu equivalent thereof of any other fuel;

except that such term does not include a Federal building as defined in section 521(2).

[(3) The term "multifamily dwelling" means a building which is used for residential occupancy, was completed on or before the date of enactment of this title, and contains five or more dwelling units and a central heating or central cooling system.

[(4) The term "energy efficient improvements" means any change in the operation or maintenance of a commercial building or multifamily dwelling, which change is designed primarily to reduce energy consumption in such building or dwelling and which has been identified by the Secretary in the rules promulgated under section 712(a) or approved by the Secretary for consideration in the energy audits offered to eligible customers under section 731, 732, or 741.

[(5) The term "commercial energy conservation measure" means an installation or modification of an installation which is primarily designed to reduce the consumption of petroleum, natural gas, or electrical power in a multifamily dwelling or commercial building, including—

[(A) caulking and weatherstripping;

[(B) the insulation of the building or dwelling structure and systems within the building or dwelling;

[(C) storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflecting windows and door systems, glazing, reductions in glass area, and other window and door system modifications;

[(D) automatic energy control systems;

[(E) equipment associated with automatic energy control systems, which is required to operate variable steam, hydraulic, or ventilating systems;

[(F) furnace, or utility plant and distribution system, modifications, including—

[(i) replacement burners, furnaces, boilers, or any combination thereof, which (as determined by the Secretary) substantially increases the energy efficiency of the heating system.

[(ii) devices for modifying flue openings which will increase the energy efficiency of the heating system, and

[(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

[(G) replacement or modification of a lighting system which increases the energy efficiency of the lighting system without increasing the overall illumination of the building or dwelling (unless such increase in illumination is necessary to conform to any applicable State or local building code or the increase is considered appropriate by the Secretary);

[(H) energy recovery systems;

[(I) cogeneration systems which produce electricity, as well as steam or other forms of thermal or mechanical energy, and which meet such fuel efficiency requirements as the Secretary may, by rule, prescribe;

[(J) a solar energy system, as defined in section 504(8) of the Solar Energy and Energy Conservation Bank Act; and

[(K) such other measures as the Secretary identifies, by rule, for purposes of this title.

[(6) The term "eligible customer" means—

[(A) with respect to a public utility, the owner or tenant of a commercial building or the owner of a multifamily dwelling to whom that public utility sells natural gas or electricity for use in such building or dwelling, or

[(B) with respect to a building heating supplier, the owners or tenant of a commercial building or the owner of a multifamily dwelling to whom that building heating supplier sells No. 2, No. 4, or No. 6 heating oil, kerosene, or propane for use in such building or dwelling.

[(7) The term "energy audit" means an onsite inspection of a commercial building or a multifamily dwelling which determines and informs the eligible customer of at least—

[(A) the type, quantity, and rate of energy consumption of such building or dwelling;

[(B) energy efficient improvements appropriate to such building or dwelling; and

[(C) the need, if any, for the purchase and installation of commercial energy conservation measures in such building or dwelling.

The Secretary, after consulting with appropriate State officials, may establish criteria for such audits on a regional basis to account for regional variations in energy use.

[(8) The term "utility program" means a program meeting the requirements of section 731.

[(9) The term "building heating supplier program" means a program meeting the requirements of section 732.

[SEC. 711. COVERAGE.

[This title shall apply to any public utility for which coverage is provided under section 211.

[SEC. 712. RULES OF SECRETARY FOR SUBMISSION AND APPROVAL OF PLANS.

[(a) PROMULGATION OF RULES BY THE SECRETARY.—The Secretary shall, not later than 120 days after enactment of this title and after consultation with the Secretary of Housing and Urban Development and the heads of such other agencies as the Secretary deems appropriate, publish proposed rules on the content and implementation of State energy conservation plans for commercial buildings and multifamily dwellings which meet the requirements of this title. After publication of such proposed rules, the Secretary shall afford interested persons (including Federal and State agencies) an opportunity to present oral and written comments on such proposed rules. Rules prescribing the content and implementation of State energy conservation plans for commercial buildings and multifamily dwellings shall be published not earlier than forty-five days after publication of the proposed rules.

[(b) ENERGY EFFICIENT IMPROVEMENTS OF DIFFERENT TYPES AND CATEGORIES.—The rules promulgated under subsection (a) may identify energy efficient improvements in different types of commercial buildings and multifamily dwellings by climatic region and by categories determined by the Secretary on the basis of type of construction and any other factors which the Secretary deems appropriate. Such improvements shall be considered in the energy audits offered to eligible customers under sections 731, 732, and 741.

[(c) COORDINATION.—The rules promulgated under subsection (a) shall, to the extent practicable, coordinate the requirements of this title with the provisions of section 367(b)(1) of the Energy Policy and Conservation Act and with the utility program established under title II, part 1 of this Act. Such rules shall not have the effect of delaying the submission, approval, or implementation of residential energy conservation plans under title II, part 1 of this Act.

[(d) OTHER RULES.—The Secretary may prescribe any other rules necessary to carry out the provisions of this title.

[PART 2—ENERGY CONSERVATION PLANS

[SEC. 721. PROCEDURES FOR SUBMISSION AND APPROVAL OF STATE ENERGY CONSERVATION PLANS FOR COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS.

[(a) SUBMISSION AND APPROVAL OF STATE PLANS.—Not later than 180 days after the promulgation of rules under section 712(a), the Governor of each State (or any State agency specifically authorized to do so under State law) may submit to the Secretary a proposed energy conservation plan for commercial buildings and multifamily dwellings which meets the requirements of the rules promulgated

under section 712. Within such 180-day period, each nonregulated utility shall submit a proposed plan, which meets the requirements of the rules promulgated under section 712, to the Secretary unless a plan submitted under the preceding sentence for the State in which the nonregulated utility provides utility service applies to nonregulated utilities as provided in subsection (b). The Secretary may, upon request of the Governor or State agency or nonregulated utility, extend for good cause shown, the time period for submission of a plan. Each plan submitted in accordance with this subsection shall be reviewed and approved or disapproved in accordance with the procedures of subparagraphs (B) and (C) of section 212(c)(1).

[(b) NONREGULATED UTILITIES.—Any plan submitted by a Governor or State agency under subsection (a) may, in the discretion of the Governor if he notifies the Secretary within 30 days after promulgation of rules under section 712(a), apply to nonregulated utilities providing utility service in the State in the same manner as to regulated utilities. In any such case, reference elsewhere in this title to regulated utilities (including references to utilities with respect to which a State regulatory authority exercises ratemaking authority) shall, with respect to such State, be treated as references also to nonregulated utilities and references elsewhere in this title to nonregulated utilities shall not apply. For purposes of this subsection, the term "nonregulated utility" shall not include any public utility which is a Federal agency.

[(c) PLAN FOR BUILDING HEATING SUPPLIERS.—A plan applicable to building heating suppliers may be submitted by the Governor in his discretion.

[(d) TENNESSEE VALLEY AUTHORITY.—In the case of the Tennessee Valley Authority or any public utility with respect to which the Tennessee Valley Authority has ratemaking authority, the authority otherwise vested in the Governor or State agency under this section shall be vested in the Tennessee Valley Authority.

[SEC. 722. REQUIREMENTS FOR STATE PLANS FOR REGULATED UTILITIES.

[No proposed energy conservation plan for commercial buildings and multifamily dwellings submitted for regulated utilities shall be approved by the Secretary unless such plan—

[(1) requires each regulated utility to implement a program which meets the requirements of section 731 and such other requirements as may be contained in the rules promulgated by the Secretary under section 712, except that no such program may be required to apply to all of the multifamily dwellings and commercial buildings located within such utility's service area if, within 6 months from the date on which the Secretary's rules are promulgated with respect to such program, the State regulatory authority which exercises ratemaking authority over such utility determines that the inclusion of such additional buildings or dwelling would significantly impair such utility's ability—

[(A) to fulfill the requirements of section 215, or

[(B) to provide utility service to its customers.

[(2) provides adequate State procedures for implementing the enforcement of the plan;

[(3) provides procedures for insuring that effective coordination exists among various local, State, and Federal energy conserving programs within and affecting such State; and

[(4) is adopted after notice and public hearing.

[SEC. 723. PLAN REQUIREMENTS FOR NONREGULATED UTILITIES AND BUILDING HEATING SUPPLIERS.

[(a) REQUIREMENTS FOR PLANS FOR NONREGULATED UTILITIES.—No plan proposed by a nonregulated utility shall be approved by the Secretary unless such plan meets the same requirements as provided under section 722 for regulated utilities. In applying the requirements of section 722 in the case of a plan for a nonregulated utility under this section, any reference to a regulated utility shall be treated as a reference to a nonregulated utility and the reference to the State regulatory authority shall be treated as a reference to the Governor.

[(b) REQUIREMENTS FOR PLANS FOR BUILDING HEATING SUPPLIERS.—No plan proposed for building heating suppliers shall be approved by the Secretary unless such plan meets the same requirements as provided under paragraphs (3) and (4) of section 722 and—

[(1) meets the requirements of section 732 and contains adequate enforcement procedures with respect to such requirements;

[(2) meets such requirements applicable to building heating suppliers as may be contained in the rules promulgated under section 712; and

[(3) takes into account the resources of small building heating suppliers.

[PART 3—UTILITY PROGRAMS

[SEC. 731. UTILITY PROGRAMS.

[(a) GENERAL REQUIREMENTS.—Each utility program shall include procedures designed to provide that each public utility—

[(1) offers to each eligible customer, no later than 12 months after the approval of the applicable plan and every 24 months thereafter until 1990, an energy audit of the eligible customers' commercial building or multifamily dwelling;

[(2) conditions the availability of an energy audit in the case of a multifamily dwelling upon the agreement by the eligible customer to provide to the tenants of the customer's multifamily dwelling the information developed by such audit concerning energy efficient improvements and commercial energy conservation measures applicable to the individual dwelling units in such dwelling;

[(3) maintains a report of each audit performed pursuant to this subsection with respect to a commercial building or multifamily dwelling for not less than 10 years, which report shall be available to any subsequent eligible customer of such commercial building or multifamily dwelling; and

[(4) shall not be required to conduct an energy audit of a commercial building or multifamily which has been audited previously pursuant to this title or title III;

except that any public utility may contract with one or more persons, including another utility, to carry out directly some or all of the responsibilities, required by this subsection.

[(b) REQUIREMENTS CONCERNING ACCOUNTING AND PAYMENTS OF COSTS.—Each State regulatory authority or nonregulated utility shall, within 180 days after promulgation of rules under section 712(a), or such longer period as the Secretary for good cause may allow, provide—

[(1) that all amounts expended or received by the utility which are attributable to the utility program (including any penalties paid by such utility under section 714) are accounted for on the books and records of the public utility separately from amounts attributable to all other activities of such utility;

[(2) That all amounts expended by a utility for providing information concerning the availability of the energy audit offered pursuant to subsection (a)(1) are to be treated for such purposes as a current expense of providing utility service and charged to all ratepayers of such utility in the same manner as current operating expenses of providing such utility service; and

[(3) that all other amounts expended by a public utility to carry out the provisions of this title, are recovered in the manner specified by the State regulatory authority which has ratemaking authority over such utility (or in the case of a nonregulated utility in the manner specified by such nonregulated utility); except that, in the case of a multifamily dwelling, the amount which may be recovered directly from an eligible customer for whom the activities described in subsection (a) are performed shall not exceed a total of $15 per dwelling unit or the actual cost of such activities, whichever is less; in determining the amount to be recovered directly from customers as provided under this paragraph, the State regulatory authority (in the case of a regulated utility) or the utility (in the case of nonregulated utility) shall take into consideration, to the extent practicable, the customers' ability to pay and the likely levels of participation in the utility program which will result from such recovery.

[(c) RATEPAYER.—For purposes of subsection (b), the term "ratepayer"means any person, State agency, or Federal agency who purchases electric energy or natural gas from a utility for purposes other than for resale.

[SEC. 732. BUILDING HEARING SUPPLIER PROGRAM.

[(a) REQUIREMENTS.—Except as may be provided by the Secretary, the procedures for each building heating supplier program shall be identical to the procedures required for utilities in section 731(a).

[(b) WAIVER.—The Governor may waive, for any building heating supplier, any requirement established pursuant to this section, upon demonstration to the Governor's satisfaction that the resources of such supplier do not enable the supplier to comply with such requirement.

[PART 4—FEDERAL IMPLEMENTATION

[SEC. 741. FEDERAL STANDBY AUTHORITY.

[(a) PROMULGATION OF PLAN BY THE SECRETARY.—If a State does not have a plan approved under section 721 within 270 days after promulgation of rules under section 712(a) or within such additional period as the Secretary may allow pursuant to section 721(a), or if the Secretary determines after notice and opportunity for a public hearing that an approved plan is not being adequately implemented in such State, the Secretary shall—

[(1) promulgate a plan which meets the requirements of section 722; and

[(2) under such plan, by order, require each regulated utility in the State to offer, no later than 90 days following the date of issuance of such order, to its eligible customers a utility program prescribed such order which meets the requirements specified in section 731.

[(b) NONREGULATED UTILITIES.—If a nonregulated utility which is not covered by an approved State plan under section 721 does not have a plan approved under such section within 270 days after promulgation of rules under section 712(a) or within such additional period as the Secretary may allow pursuant to section 721(a), or if the Secretary determines that such nonregulated utility has not adequately implemented an approved plan, the Secretary shall, by order, require such nonregulated utility—

[(1) to promulgate a plan which meets the requirements of section 723 and which applies to the commercial buildings and multifamily dwellings which would have been covered had such a plan been so approved or implemented; and

[(2) no later than 90 days following the date of issuance of such order, to offer to its customers a utility program prescribed in such plan which meets the requirements specified in section 731.

[(c) ENFORCEMENT.—If the Secretary determines that any person has violated any provision of this title, any plan approved or promulgated under this title, or any order issued pursuant thereto, the Secretary may file a petition in the appropriate United States district court to enjoin such person from violating such provision, plan, or order. The provisions of subsections (c) and (d) of section 219 shall apply to any violation of any order or plan promulgated by the Secretary under authority of subsections (a) and (b) of this section.]

ADDITIONAL VIEWS ON H.R. 969 OF HON. RALPH M. HALL AND HON. CARLOS J. MOORHEAD

As the original sponsors of the legislation to repeal the Residential and Commercial and Apartment Conservation Programs, we support this compromise legislation. From our perspective, this bill is an important step towards recognizing that the best way to achieve energy conservation is through the operation of the marketplace. Decontrol efforts have shown that the most rational and efficient energy choices are made when government interference with the free market is minimized. The cost of excessive Federal regulation is always borne by the consumer, and the recent dramatic drop in oil prices is just one more example of how the consumer benefits enormously when government stops second guessing the marketplace.

The Residential and Commercial Apartment Conservation Programs were created to serve laudable purposes. They were enacted to enable households and businesses to undertake a full audit of their energy use and to help low and moderate income families identify cost-effective conservation measures which would lower their energy bills. These programs have failed dismally. They have not benefitted low and moderate income families. They have needlessly added to the heavy burden shouldered by our Nation's ratepayers and small businesses.

We applaud the committee's recognition of the problems with these programs and its attempts to improve the Residential Conservation Service (RCS) program, but we support this legislation primarily because it repeals the Commercial and Apartment Conservation Service Program (CACS). We believe that CACS would repeat the mistakes made with RCS. Since the CACS program has not yet been fully implemented, we believe we should prevent this program from establishing any further bureaucratic roots by supporting its immediate repeal.

Once operational, the CACS program would have suffered from the same problems that have flawed the RCS program and may result in even greater inequities. Like RCS, CACS audits would subsidize the affluent at the expense of the poor, elderly, and minorities. The subsidy, however, would be even larger than that provided under RCS. Comprehensive energy audits of large or multitenant buildings are far more complicated and costly than audits provided for single family dwellings under RCS. Also, CACS is fundamentally unfair since it forces residential ratepayers to subsidize commercial establishments.

It is also likely that CACS would be even less effective than RCS. A landlord has little incentive to install conservation measures when the costs of utilities are passed on to renters. On the other hand, renters are unlikely to invest in modifications which will improve the value of their landlords' property and which would only

pay off over a period of time which is longer than the renters' tenancy. Also, renters are unlikely to invest in measures whose effectiveness is contingent upon other renters adopting similar conservation measures.

This is particularly true in light of the dismally low rates of participation likely to be encountered.

Further, as with RCS, the likelihood that those few who do participate will install conservation measures is quite small. This should not be surprising. Many cost-effective conservation measures are obvious, and the marketplace has already ensured their implementation. To the extent lower utility bills enhance the value of commercial property and improve the bottom line for businesses, owners and entrepreneurs have a financial incentive to install cost-effective energy conservation measures.

In conclusion, this bill will extend the RCS program for an additional three years. Our preference, of course, would be to repeal this program as well. But we support this legislation as the best possible compromise under the circumstances, and as a necessary first step in repealing mandatory regulatory programs which have burdened small businesses, cost energy consumers millions of dollars, and distorted the marketplace for energy conservation and services over the last seven years.

RALPH M. HALL.
CARLOS J. MOORHEAD.